

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GOLO, LLC,

Plaintiff,

v.

Goli Nutrition Inc., a Canadian Corporation,
Goli Nutrition Inc., a Delaware Corporation and
Michael Bitensky,

Defendants.

Goli Nutrition Inc., a Canadian Corporation and
Goli Nutrition Inc., a Delaware Corporation,

Counter-Plaintiffs,

v.

GOLO, LLC and Christopher Lundin,

Counter-Claim Defendants.

C.A. No. 20-667-RGA

JURY TRIAL DEMANDED

**DEFENDANTS GOLI NUTRITION INC., A CANADIAN CORPORATION, GOLI
NUTRITION INC., A DELAWARE CORPORATION, AND MICHAEL BITENSKY'S
ANSWER TO FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, AND
COUNTER-CLAIMS**

1. Defendants Goli Nutrition Inc., a Canadian Corporation (“Goli Canada”), Goli Nutrition Inc., a Delaware Corp. (“Goli US,” and together with Goli Canada, “Goli Nutrition”), and Michael Bitensky (together with Goli Nutrition, “Defendants”), through their undersigned counsel, hereby answer and assert affirmative defenses to the Complaint of GOLO, LLC (“GOLO” or “Plaintiff”) dated Dec. 20, 2021 (D.I. 124) (the “FAC”). Defendants’ answers and affirmative defenses are based on information and knowledge thus far secured by Defendants, and Defendants reserve the right to amend to supplement their answers or affirmative defenses based on facts later

discovered, pleaded, or offered. To the extent that any express or implied allegations in the Complaint are not specifically admitted herein, Defendants hereby deny such allegations.

Nature of Action¹

2. Defendants deny the claims set out in Paragraph 2 of the FAC concerning the efficacy and reliability of GOLO's products, including that GOLO "offers a total weight loss and wellness solution, which includes a unique and proprietary plan to help its customers make healthy lifestyle changes to allow them to lose weight and a patented dietary supplement that has been clinically shown to increase weight loss, reduce hunger and cravings and suppress the appetite, reduce stress and anxiety, increase immune function, and increase energy" and that "the GOLO plan and dietary supplement have been shown to reduce health risk factors, including by lowering blood sugar levels, blood pressure, cholesterol, triglycerides, and visceral fat, and by significantly reducing a person's body mass index." Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 2 of the FAC, and therefore deny those allegations.

3. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 3 of the FAC, and therefore deny those allegations.

4. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 4 of the FAC, and therefore deny those allegations, although Defendants generally agree that consumers are vulnerable to companies like GOLO that offer products that promise easy and quick routes to weight loss and make other statements that mislead consumers about their products and services.

¹ The headings from GOLO's FAC are reproduced here for ease of reference, and Defendants do not admit to any statement contained therein.

5. Defendants admit that Goli Nutrition entered the U.S. market in 2019, that Mr. Bitensky helped to launch the company, and that Goli Nutrition sells its products in connection with its GOLI NUTRITION mark and its federally registered GOLI mark. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 5 of the FAC.

6. Defendants admit that Goli Nutrition has marketed its Apple Cider Vinegar (“ACV”) Gummies through multiple channels. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 6 of the FAC.

7. Defendants admit that a third party filed a complaint with the National Advertising Division, and state that the filings in that proceeding speak for themselves. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 7 of the FAC.

8. Defendants admit that Goli Nutrition offers an Ashwagandha (“Ashwa”) Gummy product for sale that was launched in or about January 2021, and that Ashwagandha is an adaptogen that is used, in part, for stress. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 8 of the FAC.

9. Defendants admit that Goli Nutrition offers a “Superfruits Gummy” product for sale that was launched in or about May 2021. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 9 of the FAC.

10. Defendants admit that Goli Nutrition offers a “Supergreens Gummy” product for sale that was launched in or about September 2021. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 10 of the FAC.

11. Defendants admit that Goli Nutrition offers a “Multi Bites” product and a “Calm Bites” product for sale that were launched in or about November 2021. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 11 of the FAC.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Paragraph 18 of the FAC contains legal conclusions to which no response is required. To the extent a response is required, Defendants admit that the FAC purports to assert claims for trademark infringement, unfair competition, false advertising, and cancellation of a registered trademark, but deny that the allegations underlying those claims have any merit.

A. The Parties

19. Admitted.

20. Admitted.

21. Defendants admit that Goli Canada has a registered office at 8430-240 Santa Monica Boulevard, West Hollywood, California 90069 and that Goli Canada does business in the United States. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 21 of the FAC.

22. Admitted.

23. Defendants admit that Goli US does business in the United States, including in Delaware. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 23 of the FAC.

24. Defendants admit that Mr. Bitensky is the President and co-founder of Goli Nutrition and admit that Mr. Bitensky is a citizen of Canada. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 24 of the FAC.

25. Paragraph 25 of the FAC asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 25 of the FAC.

B. Jurisdiction and Venue

26. Paragraph 26 of the FAC asserts legal conclusions to which no response is required.

27. Defendants admit that this Court has personal jurisdiction over Defendants. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 27 of the FAC.

28. Defendants admit that this Court has personal jurisdiction over Defendants. Paragraph 28 of the FAC otherwise asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 28 of the FAC.

29. Defendants admit that this Court has personal jurisdiction over Defendants. Paragraph 29 of the FAC otherwise asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 29 of the FAC.

C. The Wellness, Weight Management, and Dietary Supplement Industry

30. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 30 of the Complaint, and therefore deny those allegations.

31. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 31 of the Complaint, and therefore deny those allegations.

D. GOLO – Its Philosophy, Products, and Marks

32. Defendants deny the claims set out in Paragraph 32 of the FAC concerning the efficacy and reliability of GOLO's products, including that GOLO "provide[s] individuals with a

natural and effective way to combat obesity and achieve sustainable weight loss and overall better health.” Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 32 of the Complaint, and therefore deny those allegations.

33. Defendants deny the claims set out in Paragraph 33 of the FAC concerning the efficacy and reliability of GOLO’s products, including that the “GOLO Plan” “supports weight loss, reduces hunger and cravings, reduces stress and anxiety, increases immune function, and increases energy” and that “[e]ach part of the GOLO Plan, including its Release dietary supplement, has been clinically tested and proven to promote weight loss and provide improvements in health markers.” Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 33 of the Complaint, and therefore deny those allegations.

34. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 34 of the FAC, and therefore deny those allegations.

35. Denied.

36. Denied.

37. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 37 of the FAC, and therefore deny those allegations.

38. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 38 of the FAC, and therefore deny those allegations.

39. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 39 of the FAC, and therefore deny those allegations.

40. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 40 of the FAC, and therefore deny those allegations.

41. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 41 of the FAC, and therefore deny those allegations.

42. Denied.

43. Defendants state that Exhibit A to the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 43 of the FAC.

44. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 44 of the FAC, and therefore deny those allegations.

45. Denied.

46. Defendants state that Exhibit B to the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 46 of the FAC.

47. Defendants admit that GOLO has filed oppositions to trademark applications filed by certain of the Defendants. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 47 of the FAC.

48. Defendants deny the claims set out in Paragraph 48 of the FAC concerning the efficacy and reliability of GOLO's products, including that GOLO's products "provide the marketed benefits." Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 48 of the FAC, and therefore deny those allegations.

49. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 49 of the FAC, and therefore deny those allegations.

E. Defendants Launch Goli's Products, Which Compete with GOLO's Proprietary Weights Loss and Wellness Products

50. Defendants admit that Goli Nutrition was founded in 2019, that Mr. Bitensky is one of its co-founders, and that today Mr. Bitensky is the President and Chief Executive Officer.

Defendants further state that the webpages from the domain <https://goli.com> cited in Paragraph 50 of the FAC speak for themselves. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 50 of the FAC.

51. Defendants state that the patents cited in Paragraph 51 of the FAC speak for themselves, and otherwise deny the allegations set forth in Paragraph 51 of the FAC.

52. Defendants state that the webpages from the domain <https://goli.com> cited in Paragraph 52 of the FAC speak for themselves. Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 52 of the FAC, and therefore deny those allegations.

53. Defendants state that the webpage at the URL cited in Paragraph 53 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 53 of the FAC.

54. Defendants admit that the image cited in Paragraph 54 of the FAC has appeared on the domain <https://goli.com>.

55. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 55 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 55 of the FAC.

56. Denied.

57. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 57 of the FAC, and therefore deny those allegations.

58. Denied.

59. Defendants state that Goli Nutrition's advertising speaks for itself, and otherwise deny the allegations set forth in Paragraph 59 of the FAC.

60. Defendants admit that ads for Goli Nutrition products have appeared on Facebook, YouTube, and Instagram. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 60 of the FAC.

61. Defendants admit that a third party filed a complaint with the National Advertising Division. Defendants state that Exhibit C to the FAC and the other filings in the proceeding before the NAD speak for themselves. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 61 of the FAC.

62. Defendants state that Exhibit C to the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 62 of the FAC.

63. Defendants state that Exhibit C to the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 63 of the FAC.

64. Defendants state that Exhibit C to the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 64 of the FAC.

65. Denied.

66. Denied.

67. Denied.

68. Defendants admit that paid affiliates have posted material related to concerning ACV Gummies on social media. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 68 of the FAC.

69. Defendants deny the allegations in Paragraph 69 of the Complaint, including that GOLO is “truthful” in its advertising and that Goli Nutrition’s market share has had any effect whatsoever on GOLO, which does not compete with Goli Nutrition.

70. Denied.

71. Defendants admit that Goli Nutrition offers an “Ashwagandha Gummy” product for sale that was launched in or about January 2021. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 71 of the FAC.

72. Defendants admit that Ashwagandha is an adaptogen that helps the body maintain balance and adjust to stress. Defendants lack sufficient knowledge or information to form a belief as to the remaining allegations set forth in Paragraph 72 of the FAC, including as to the accuracy or authenticity of the materials cited therein, and therefore deny those allegations. To the extent the accuracy or authenticity of those materials may be established, those materials speak for themselves, and Defendants otherwise deny the allegations set forth in Paragraph 72 of the FAC..

73. Denied.

74. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 74 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 74 of the FAC.

75. Defendants admit that paid affiliates have posted material related to Ashwa Gummies on social media. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 75 of the FAC.

76. Defendants admit that Goli Nutrition offers a “Superfruits Gummy” product for sale that was launched in or about May 2021. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 76 of the FAC.

77. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 77 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 77 of the FAC, although Defendants aver that GOLO completely redesigned the packaging and label of its Release pill to make it appear

more similar to Goli Nutrition's Superfruits packaging only after Goli began using the same, and that GOLO only began prominently displaying its GOLO mark on its Release product in late 2021, long after it initiated this action.

78. Denied.

79. Defendants admit that Goli Nutrition products are sold at the URL www.goli.com and through the Amazon platform. Defendants otherwise lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 79 of the FAC, and therefore deny those allegations.

80. Denied.

81. Denied.

82. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 82 of the FAC, and therefore deny those allegations.

83. Denied.

F. Defendants and their Junior Use of the GOLI Marks

84. Defendants admit that Goli Canada owns the domain www.goli.com, and state that the webpage located at that domain speaks for itself. Defendants further admit that consumers can purchase products through the www.goli.com website, and that the "Goli" trademark appears on the website www.goli.com. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 84 of the FAC.

85. Defendants admit that Goli Nutrition uses a trademark incorporating the word "Goli." Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 85 of the Complaint.

86. Defendants admit that the Goli Marks are and have been used in television advertisements and in social media marketing. Defendants further admit that certain Goli-branded

products are available for sale at various retailers throughout the United States, including Delaware, and that such retailers include Target, Walmart, Bed Bath & Beyond, The Vitamin Shoppe, and GNC. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 86 of the FAC.

87. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 87 of the FAC, and therefore deny those allegations.

88. Denied.

89. Denied.

90. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 90 of the FAC, and therefore deny those allegations.

91. Denied.

92. Paragraph 92 of the FAC asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 92 of the FAC.

G. Defendants' Applications To Register, and Registration of, GOL I

93. Defendants admit that Goli Canada is the owner of Trademark Registration No. 6,047,784 for the trademark GOL I, which was first used on the goods and services listed in U.S. Trademark Registration No. 6,047,784 in April 2019. Defendants further state that Exhibit D to the FAC speaks for itself. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 93 of the FAC, and reject GOLO's characterization of their registration for GOL I as "Infringing."

94. Defendants admit that Goli Canada filed applications to register the trademarks identified in Paragraph 94(a)-(c). Except as so admitted, Defendants deny the remainder of the

allegations set forth in Paragraph 94 of the FAC and reject GOLO's characterization of their applications for GOLI as "Infringing."

95. Paragraph 95 asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 95 of the FAC.

96. Defendants admit that they did not use any of the Goli Marks or file any trademark applications for the term "Goli" prior to May 2, 2013. Paragraph 96 of the FAC otherwise asserts legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations set forth in Paragraph 96 of the FAC.

97. Denied.

98. Defendants admit that Mr. Bitensky was involved in the selection of the Goli mark and as President and co-founder is involved in the operation of the company. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 98 of the FAC.

99. Denied.

H. Defendants' False and Misleading Statements

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

Two ACV Gummies Are Not Equal to a "Shot" of ACV

105. Denied.

106. Denied.

107. Denied.

108. Defendants state that the webpage at the URL cited in Paragraph 108 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 108 of the FAC.

109. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 109 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 109 of the FAC.

110. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 110 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 110 of the FAC.

111. Defendants admit that current versions of bottles of ACV Gummies sold by Goli Nutrition do not include a “2=1 Claim,” as that term is defined by GOLO in the FAC. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 111 of the FAC.

112. Defendants admit that the “Frequently Asked Questions” page cited in Paragraph 112 of the FAC does not make any reference to the “2=1 Claim,” as that term is defined by GOLO in the FAC. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 112 of the FAC.

113. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 113 of the FAC and therefore deny those allegations.

114. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 114 of the FAC and therefore deny those allegations.

115. Denied.

116. Denied.

117. Defendants state that the webpage at the URL cited in Paragraph 117 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 117 of the FAC.

118. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 118 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 118 of the FAC.

119. Admitted.

120. Denied.

121. Denied.

122. Defendants state that the webpage at the URL cited in Paragraph 122 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 122 of the FAC.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

Goli's ACV Gummies Do Not Contain 500 mg of ACV

131. Denied.

132. Denied.

Goli's ACV Gummies Do Not Contain "The Mother"

133. Defendants state that the webpage at the URL cited in Paragraph 133 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 133 of the FAC.

134. Denied.

135. Defendants state that the webpage at the URL cited in Paragraph 135 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 135 of the FAC.

136. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 136 of the FAC and therefore deny those allegations.

137. Denied.

138. Denied.

139. Denied.

Defendants Misrepresent the Ingredients in Goli's Ashwa Gummies

140. Denied.

141. Defendants state that the webpage at the URL cited in Paragraph 141 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 141 of the FAC.

142. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 142 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 142 of the FAC.

143. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 143 of the FAC, and therefore deny those allegations.

144. Defendants admit that the Ashwa Gummies sold by Goli Nutrition are vegan, and that they are labeled accordingly. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 144 of the FAC.

145. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 145 of the FAC, and therefore deny those allegations.

146. Denied.

147. Denied.

Ashwa Gummies Contain More Calories than Claimed

148. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 148 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 148 of the FAC.

149. Denied.

150. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 150 of the FAC, and therefore deny those allegations.

151. Denied.

152. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 152 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 152 of the FAC.

Defendants' False and Misleading Claims That the Benefits of its Ashwa Gummies Are "Clinically Proven"

153. Denied.

154. Defendants state that the webpage at the URL cited in Paragraph 154 of the FAC speaks for itself. Defendants are unable to ascertain, among other things, the authenticity or date of the other materials cited in Paragraph 154 of the FAC based upon the information contained in the FAC, and therefore deny the allegations concerning those materials. Defendants otherwise deny the allegations set forth in Paragraph 154 of the FAC.

155. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 155 of the FAC concerning the purported postings by parties other than Goli Nutrition. Defendants state that posting on Goli Nutrition social media pages speak for themselves. Defendants otherwise deny the allegations set forth in Paragraph 155 of the FAC.

156. Defendants state that the webpage at the URL cited in Paragraph 156 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 156 of the FAC.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

Defendants' False and Misleading "Organic" Claims

162. Denied.

163. Denied.

164. Defendants state that the webpage at the URL cited in Paragraph 164 of the FAC speaks for itself, and otherwise deny the allegations set forth in Paragraph 164 of the FAC.

165. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 165 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 165 of the FAC.

166. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 166 of the FAC, and therefore deny those allegations.

167. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 167 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 167 of the FAC.

168. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 168 of the FAC, and therefore deny those allegations.

169. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 169 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 169 of the FAC.

170. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 170 of the FAC, and therefore deny those allegations.

171. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 171 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 171 of the FAC.

172. Defendants are unable to ascertain, among other things, the authenticity or date of the materials cited in Paragraph 172 of the FAC based upon the information contained in the FAC. Defendants therefore deny the allegations in Paragraph 172 of the FAC.

173. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 173 of the FAC, and therefore deny those allegations.

174. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 174 of the FAC, and therefore deny those allegations.

175. Defendants lack sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 175 of the FAC, and therefore deny those allegations.

176. Denied.

177. Defendants admit that Paragraph 177 sets out a series of terms defined by Plaintiff. Except as so admitted, Defendants deny the remainder of the allegations set forth in Paragraph 177 of the FAC and deny that any of the terms defined therein are accurate.

I. Defendants' False and Misleading Claims and Goli's Use of the GOLI Marks Have Injured Consumers and GOLI.

178. Denied.

179. Denied.

180. Defendants lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 180 of the FAC, and therefore deny those allegations.

181. Denied.

182. Denied.

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

192. Denied.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

COUNT I – INFRINGEMENT OF REGISTERED TRADEMARK
(Against All Defendants)

199. Defendants incorporate by reference their responses to Paragraphs 1 through 198 of the FAC as if set forth fully herein.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

205. Denied.

COUNT II – FALSE DESIGNATION OF ORIGIN
(Against All Defendants)

206. Defendants incorporate by reference their responses to Paragraphs 1 through 205 of the FAC as if set forth fully herein.

207. Denied.

208. Denied.

209. Denied.

210. Denied.

211. Denied.

COUNT III – CANCELLATION OF DEFENDANTS' INFRINGING REGISTRATION
(Against Goli)

212. Defendants incorporate by reference their responses to Paragraphs 1 through 211 of the FAC as if set forth fully herein.

213. Denied.

214. Denied.

215. Denied.

COUNT IV – FALSE ADVERTISING UNDER FEDERAL LAW

(Against All Defendants)

216. Defendants incorporate by reference their responses to Paragraphs 1 through 215 of the FAC as if set forth fully herein.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

222. Denied.

223. Denied.

224. Denied.

COUNT V – UNFAIR COMPETITION UNDER DELAWARE LAW

(Against All Defendants)

225. Defendants incorporate by reference their responses to Paragraphs 1 through 224 of the FAC as if set forth fully herein.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

COUNT VI – UNFAIR COMPETITION UNDER DELAWARE LAW (FALSE ADVERTISING)

(Against All Defendants)

230. Defendants incorporate by reference their responses to Paragraphs 1 through 229 of the FAC as if set forth fully herein.

231. Denied.

232. Denied.

233. Denied.

234. Denied.

PRAYER FOR RELIEF

Defendants deny that GOLO is entitled to any recovery or relief in connection with the allegations set forth in the FAC, including, but not limited to, the requested relief set out in the FAC's Prayer for Relief.

GENERAL DENIAL

Defendants deny each and every allegation of the Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

As affirmative, separate, and other defenses to the Complaint asserted against Defendants, Defendants state as follows without assuming the burden of proof on matters where it has no such burden. In doing so, Defendants specifically reserve the right to restate, re-evaluate, or recall any defenses and to assert additional defenses based on information learned or obtained during discovery.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

GOLO is engaged in trademark misuse in attempting to monopolize the market beyond the boundaries of any purported trademark rights it may have, if any. In particular, Plaintiff seeks to enjoin and recover damages as a result of Defendants' use of a wholly different mark that is used in connection with products that Plaintiff does not sell.

THIRD AFFIRMATIVE DEFENSE

Some or all of the relief sought by GOLO is barred because GOLO has failed to establish irreparable injury.

FOURTH AFFIRMATIVE DEFENSE

The relief sought by GOLO is barred by the doctrine of unclean hands.

First, Plaintiff has made grossly inconsistent statements regarding the GOLO mark that if not illegal, were unconscionable and should bar the relief sought in the Complaint. In particular, on September 3, 2013, Plaintiff swore to the United States Patent and Trademark Office that it first used the GOLO mark in connection with dietary supplements in commerce on May 2, 2013, and has asserted that date of first use against Defendants. However, in another sworn statement subsequently filed on March 30, 2015 by Plaintiff's Chief Executive Officer and co-founder Christopher Lundin, in connection with his Chapter 7 Voluntary Petition filed with the United States Bankruptcy Court for the District of Delaware (Case No. 15-10435-LSS), Mr. Lundin stated that Plaintiff "has yet to bring a product to market" and "[t]he only assets of the company are the web address and derivatives thereof, as well as a license for use of the nutraceutical [sic] *it plans to sell.*" (emphasis added.) As such, Plaintiff or its principal was dishonest with the USPTO or with the United States Bankruptcy Court for the District of Delaware. Either way, Plaintiff, upon information and belief, lied to the federal government and materially and publicly misstated its rights to the GOLO mark that it now asserts against Defendants. Such conduct should bar the relief sought here.

Second, Plaintiff's claims are barred, in whole or in part, in light of its false and misleading claims regarding its GOLO-branded products and services that purportedly compete with Defendants' products and form the basis of its claims. As detailed in Goli Nutrition's counterclaims, Plaintiff has engaged in labeling, marketing and advertising conduct designed to deceive consumers about its products. For instance, Plaintiff previously advertised the Release

pill exclusively as a weight loss product, specifically “[a] patented, insulin-controlling supplement designed to restore insulin performance, curb hunger cravings, and stop fat storage so you can lose weight and keep it off.” *See* Exhibit 1, at 2. More recently, GOLO has altered its advertising of the Release pills to promise a host of additional benefits, claiming that “the ingredients in Release have the unique ability to support multi-dimensional therapeutic benefits including: Increased energy and reduced fatigue; Healthier immune function; Reduced hunger and cravings; Balanced blood sugar and insulin levels; [and] Reduced stress levels and anxiety.” *See* Exhibit 2, at 1.. As set out further in Goli Nutrition’s counterclaims, these claims are false and unsupported. As an additional example, as set forth in Goli Nutrition’s counterclaims, Plaintiff has altered the manner in which it markets its products to advance new and unsupported claims that its products offer benefits comparable to Goli Nutrition’s products to manufacture support for its story that the parties compete, when in fact they do not, and to injure Goli Nutrition’s reputation in the market. Thus, as detailed in Goli Nutrition’s counterclaims, Plaintiff is seeking to capitalize in this case on the fruits of its own misconduct in the form of misleading labeling and advertising. Defendants and the public at large have been and continue to be injured by Plaintiff’s egregious misconduct.

FIFTH AFFIRMATIVE DEFENSE

GOLO’s claims are barred, in part or in whole, by the doctrine of laches, in that GOLO has unreasonably delayed efforts to enforce its rights, if any, despite full awareness of Defendants’ actions.

SIXTH AFFIRMATIVE DEFENSE

Count V of the Complaint must be dismissed because (1) pursuant to 15 U.S.C. § 1119, cancellation of a federal trademark registration is a remedy, not a separate cause of action; and (2) there is no infringement.

SEVENTH AFFIRMATIVE DEFENSE

GOLO's false advertising claims fail due to lack of Article III and Lanham Act standing.

ADDITIONAL DEFENSES

Defendants reserve the right to assert additional defenses based on information learned or obtained during discovery.

COUNTERCLAIMS

For their counterclaims against Counter-Defendants GOLO LLC and Christopher Lundin (together, "GOLO"), Counter-Plaintiffs Goli Nutrition Inc., a Canadian Corporation ("Goli Canada"), and Goli Nutrition Inc., a Delaware Corp. ("Goli US," and together with Goli Canada, "Goli Nutrition"), respectfully state as follows:

NATURE OF THE COUNTERCLAIMS

1. This is an action for false and/or misleading representations or descriptions of facts, false advertising, unfair competition, and deceptive trade practices under the United States Trademark (Lanham) Act, 15 U.S.C. §§ 1051 et seq. (as amended), and Delaware statutory and common law arising from GOLO's intentional false and/or misleading representations of fact concerning the nature, quality, and characteristics of GOLO's weight loss and weight control products. For example, GOLO has made numerous false and misleading advertising claims on the GOLO website and other electronic and printed materials regarding the ability of GOLO's products to treat, mitigate, cure, or prevent diseases or symptoms associated with diseases, the purported "clinically proven" health and wellness benefits of GOLO's Release diet pill ("Release"), and the results consumers can expect to obtain by taking Release. On information and belief, GOLO has made false or misleading advertising claims about Release to emulate Goli Nutrition, despite the fact that GOLO's claims do not have the same substantiation as Goli's claims, and to create the impression in the marketplace that GOLO's diet pill competes with Goli

Nutrition's innovative supplement products, when it does not, both to manufacture support for GOLO's false advertising and unfair competition claims against Goli Nutrition and Goli Nutrition's co-founder and President, Michael Bitensky, and to cause harm to Goli Nutrition's reputation and standing in the marketplace as a leader in providing high-quality and in-demand nutritional supplements.

2. GOLO's actions constitute false and/or misleading representations or descriptions of facts, false advertising, and unfair competition. On information and belief, GOLO's false and/or misleading representations or descriptions of fact, false advertising, and unfair competition are likely to and will inevitably demean, disparage and tarnish the goodwill and business reputation created by Goli Nutrition, harm Goli Nutrition's credibility in the trade, and reduce the demand for Goli Nutrition's products

3. Additionally, Goli Nutrition brings these counterclaims to obtain a declaration that certain U.S. trademark registrations allegedly owned by GOLO are invalid because those registrations were based on inaccurate declarations of use, and therefore, were not and are not entitled to registration on *void ab initio* grounds, or because the registered marks have been abandoned through non-use of more than three years with an intent not to resume use. Goli Nutrition is being damaged by these invalid registrations because GOLO is asserting the registrations against Goli Nutrition in this action, and therefore requests that this Court order cancellation of the invalid registrations under authority of 15 U.S.C. § 1119.

4. As a result of GOLO's unlawful actions, Goli Nutrition seeks a permanent injunction, corrective advertising damages, costs, attorneys' fees, punitive damages, declaratory relief and other relief as more fully set forth below.

PARTIES

5. Counter-Plaintiff Goli Canada is a corporation organized on October 4, 2018, under the federal laws of Canada with its principal place of business at 1 Westmount Square, Suite 1500, Westmount, H3Z2P9, Quebec, Canada.

6. Counter-Plaintiff Goli US is a corporation organized on April 30, 2019, under the laws of the State of Delaware with its principal place of business at 1 Westmount Square, Suite 1500, Westmount, H3Z2P9, Quebec, Canada.

7. Goli Canada and Goli US have been named as Defendants in this action.

8. On information and belief, Counter-Defendant GOLO, LLC is a Delaware limited liability company with its principal place of business at 258 Chapman Road, Chopin Building, Suite 104, Newark, Delaware 19702.

9. GOLO, LLC is the Plaintiff in this action.

10. On information and belief, Counter-Defendant Christopher Lundin is domiciled in Delaware and is, and at all relevant times was, the Chief Executive Officer of GOLO, LLC. On information and belief, Mr. Lundin authorizes, controls, and directs GOLO, LLC's marketing and advertising claims and strategies, including without limitation the various claims made by GOLO, LLC described herein, as well as GOLO, LLC's litigation strategies.

JURISDICTION AND VENUE

11. These counterclaims arise under, respectively, the Lanham Act, 15 U.S.C. § 1051 et seq., DEL. CODE ANN. TTT. 6 § 2531, and the common law of the state of Delaware.

12. The Court has subject matter jurisdiction of this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 2201 because the action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. and the Lanham Act, 15 U.S.C. § 1051 et seq. This Court has supplemental jurisdiction over the counterclaims arising under the law of Delaware pursuant to under 28 U.S.C. § 1367 because these counterclaims are so related to the counterclaim arising

under the Lanham Act that they form part of the same case and controversy under Article III of the United States Constitution.

13. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391.

BACKGROUND

II. GOLI NUTRITION'S EXCEPTIONAL REPUTATION AND SUCCESS IN THE GROWING MARKET FOR NUTRITIONAL SUPPLEMENTS

14. Goli Nutrition is an inventive, people-focused nutrition company that believes happiness and wellness go hand in hand. Consistent with this core belief, Goli Nutrition's mission is to help consumers reach their nutrition goals while enjoying their daily supplements.

15. Traditional nutritional supplements typically have an unpleasant taste and are difficult to swallow, which makes it challenging for many consumers to incorporate them into their daily routine consistently. Goli Nutrition solves this problem by developing and bringing to market a range of innovative nutritional supplements, each containing essential vitamins and nutrients delivered via an easy-to-take chewable form with delicious flavor profiles designed to make consumers enjoy and look forward to taking their daily supplements.

16. Today, Goli Nutrition is a highly recognized name in the nutritional supplement space, and the company has a proven reputation for creating high-quality supplements. Its award-winning products are shipped to over 180 countries and can be found in more than 100,000 stores including the world's leading retailers: CVS, Target, Walgreens, Walmart, Krogers, Costco, Amazon and many more.

17. Since its launch in 2018, Goli Nutrition has been committed to supporting underserved communities and promoting health among vulnerable populations through its partnership with The Vitamin Angel Alliance, Inc. ("Vitamin Angels"), a 501(c)(3) non-profit organization headquartered in the United States. Vitamin Angels focuses on the reduction of

preventable morbidity, blindness and mortality associated with micronutrient deficiencies among children under five years of age through the distribution of vitamin A supplementation, deworming and prenatal vitamins. To date, Goli Nutrition has helped Vitamin Angels reach over 400,000 women and children with nutrition interventions. With every purchase made through Goli Nutrition's website, Goli Nutrition donates a 1-for-1 vitamin grant to a mother or child in need through Vitamin Angels. This alliance between Vitamin Angels and Goli Nutrition has been instrumental in Goli Nutrition's magnified global impact and the goodwill associated with its brand.

III. GOLI NUTRITION'S PRODUCTS

18. Goli Nutrition's high-quality products are formulated by a team of experts through sound ingredient-based science.

19. Goli Nutrition's product development is guided by a Scientific and Nutritional Advisory Board comprised of experts in the science and nutrition space. These experts conduct a comprehensive review of clinical data and scientific literature related to the key ingredients in Goli Nutrition's products to validate the reported benefits and ensure that consumption of the ingredient is safe and effective. Goli Nutrition works with its Scientific and Nutritional Advisory Board and its manufacturer to create innovative product formulations that combine high-quality, substantiated ingredients into delicious and convenient wellness solutions.

20. Goli Nutrition's gummies are manufactured in a state-of-the-art, FDA-registered and BRC-certified facility in the United States. BRC certification is a standard for international food safety management systems and is one of the recognized certification schemes of the Global Food Safety Initiative. It contains requirements for food processors to follow to build an effective food safety management system. The facility was designed with quality in mind in order to

produce safe, reputable products with the highest standard of quality assurance carried out throughout the entire manufacturing process.

21. To provide high-quality products to consumers, Goli Nutrition works closely with its manufacturer to test its products at every stage of its production process, from manufacturing to quality checks upon packaging. Goli Nutrition ensures that not only the highest quality ingredients are used, but that the highest standard of quality assurance is carried out throughout the entire production process.

A. ACV Gummies

22. Goli Nutrition's Apple Cider Vinegar ("ACV") gummies combine apple cider vinegar powder with folic acid (vitamin B9), cyanocobalamin (vitamin B12), beet root, and pomegranate in a chewable gummy with a signature, delicious apple taste. ACV has been consumed for centuries as a traditional remedy for digestion, gut health, and appetite, and Goli Nutrition is proud to have been the first to offer the unique formula of powdered ACV with vitamin B9 and Vitamin B12 and other ingredients in a convenient gummy format favored by many consumers.

23. Through innovation and technology, Goli Nutrition created a patented, industry-disrupting, first-of-its kind product to help consumers incorporate ACV and other complementary vitamins into their daily routine via a chewable gummy with a signature, delicious apple taste. Goli Nutrition released its ACV gummies, its first product, in the United States on April 19, 2019.

24. The vitamin B9 (folic acid) and vitamin B12 in Goli Nutrition's ACV gummies play a key role in maintaining homocysteine levels, which help support a healthy heart.

25. The vitamin B12 in Goli Nutrition's ACV gummies also helps support a healthy immune system, a healthy nervous system, helps convert food into cellular energy, and helps the body metabolize nutrients more effectively.

26. Health Canada, the Canadian regulator responsible for dietary supplements, has granted Goli Nutrition's ACV gummies a Natural Health Product Number (80112100) for the following claims at the recommended daily serving of 1-2 gummies, 3 times daily:

- a Used in Herbal Medicine to help support digestion.
- b Source of vitamin(s), a factor/factors in the maintenance of good health.
- c Source of vitamin(s), a factor/factors in normal growth and development.
- d Source of vitamin(s) to support biological functions which play a key role in the maintenance of good health.
- e Maintains good health.
- f Contributes to maintaining general health.
- g For maintaining general health.
- h A factor in the maintenance of good health.
- i Vitamin supplement.
- j Multi-vitamin supplement.
- k Helps to form red blood cells.
- l Helps in the normal function of the immune system.
- m Helps in energy metabolism in the body.
- n Helps to maintain healthy metabolism.
- o Helps to maintain the body's ability to metabolize nutrients.
- p Source of antioxidant(s)/ Provides antioxidant(s).
- q Source of antioxidant(s)/ Provides antioxidant(s) that help(s) fight/ protect (cell) against/reduce (the oxidative effect of/ the oxidative damages caused by/ cell damage caused by) free radicals.

27. Throughout 2019 and 2020, Goli Nutrition sold only ACV gummies, and the product became a resounding success, winning awards and becoming a daily part of millions of households.

B. Ashwa Gummies

28. Goli Nutrition launched its second product, Ashwa gummies, in the U.S. market on January 7, 2021. The launch of Goli Nutrition's Ashwa gummies was a great success.

29. The success of Goli Nutrition's Ashwa gummies is due in large part to the innovative product formulation, which includes high-quality ingredients that provide supported health benefits and a delicious berry flavor profile.

30. Goli Nutrition's Ashwa gummies are formulated with KSM-66² Ashwagandha root extract and ergocalciferol (vitamin D2), among other ingredients. Each gummy contains 12.5 mcg ergocalciferol and 150 mg KSM-66 Ashwagandha, which both provide important benefits.

31. Ergocalciferol is a form of vitamin D that helps the body absorb calcium and maintain adequate levels of serum calcium and phosphorus, thereby enabling normal bone mineralization and preventing hypocalcemic tetany. Vitamin D also helps support proper immune function. Ergocalciferol is fat-soluble (can dissolve in fats and oils) and is found in plants and yeast.

32. Ashwagandha (*Withania somnifera*) is an adaptogen which supports the normalization and balance of body system functions and stress that can destabilize normal bodily functions. For this reason, it has long been described as promoting health, revitalizing the body, and generally creating a sense of wellbeing. It is the flagship herb of Ayurveda, the traditional system of medicine from India, and has been used for centuries to help with an array of ailments.

² KSM-66 is a registered trademark of Ixoreal Biomed, Inc.

For example, ashwagandha is featured as an aphrodisiac in the ancient Kama Sutra text, which historians date back to between 400 BCE and 300 CE. More recently, ashwagandha has been studied in pharmacology and medicine to determine its potential effects on a variety of human structures and functions. Well-designed studies in humans show that ashwagandha has effects against stress, notably accompanied by, among others, decreases in cortisol, improvements in female sexual function, increases in sperm count volume and motility, increases in testosterone, and physical performance. Ashwagandha is one of few herbs with significant effects on psychological *and* physiological aspects of human functioning.

33. Ashwagandha contains several active components, which include alkaloids (isopelletierine, anaferine), steroidal lactones (withanolides, withaferins), and saponins. Ashwagandha's anxiolytic effects have been attributed to its activity as a gamma-aminobutyric acid ("GABA") mimetic agent, and it has also been postulated that its anticonvulsant activity is due to binding to the GABA receptor. Regarding its anti-stress activity, research indicates that ashwagandha suppresses stress-induced increase of dopamine receptors in the corpus striatum of the brain, while at the same time it acts to reduce stress-induced increases of plasma corticosterone, blood urea nitrogen, and blood lactic acid.

34. The KSM-66 ashwagandha extract ("KSM-66") used in Goli Nutrition's Ashwa gummies is a proprietary ashwagandha extract that is superior to other ashwagandha extracts on the market. KSM-66 is the ashwagandha root extract with the most extensive set of research studies and clinical trials. It is also the botanical with the highest number of certifications.

35. KSM-66 is made using only the roots of the ashwagandha plant with absolutely no addition of leaves. Although use of the root only is more expensive, both independent clinical trials and in thousands of years of traditional use, the root is the part of the plant that is used

predominantly for adaptogenic benefits and internal ingestion. The leaves were traditionally used for topical treatments on the skin, not internal consumption.

36. KSM-66 is a full-spectrum root extract, which means it maintains the balance of the various constituents as in the original root, without over-representing any one constituent. The ashwagandha root's efficacy is believed to be derived from a complex blend of active constituents, mainly alkaloids like withanine, somniferine, tropine and steroidal lactones called withanolides. All these constituents need to be present approximately in their natural proportions, and hence it is necessary for an extract to be full spectrum. KSM-66 has the highest percentage of withanolides of all branded root-only extracts on the market today. It has more than five percent concentration of withanolides as measured by HPLC.

37. KSM-66 has been studied in more research studies and clinical trials than any other ashwagandha extract on the market. To date, there are 24 clinical studies that have assessed the effects of KSM-66 on human structures and functions. These trials follow the gold standard—double-blind, placebo-controlled, randomized studies.

38. The published studies on KSM-66 are of academia standard, were conducted using generally accepted professional procedures, and all are published in PubMed-indexed high-quality medical journals. The principal investigators are leading researchers with established publication records.

39. Additionally, the studies evaluated KSM-66 administered to subjects in two daily servings of 300 mg (600 mg daily serving)—the same amount of KSM-66 in a daily serving of Goli Nutrition's Ashwa gummies. The studies also used the standardized form of ashwagandha root extract supplied by Ixoreal BioMed and used by Goli Nutrition in its Ashwa gummies.

40. For example, the studies have shown that KSM-66 supports the improvement of memory and cognitive abilities as well as information processing, executive function, and attention in healthy individuals.

41. Additionally, the studies have shown that KSM-66 reduces levels of cortisol, a stress-related hormone. Stress can cause an increase in food cravings and overeating. Research shows that by lowering cortisol levels, KSM-66 can help reduce stress-related food cravings, helping to reduce and maintain a healthy body weight. For example, one study by Choudhary et al. (2016) (conducted a double-blind, randomized, placebo-controlled trial on 52 men and women under chronic stress to evaluate the efficacy of KSM-66 and determine its role in weight management. Results of the study demonstrate that KSM-66 is useful for reducing body weight and maintaining a healthy weight in adults experiencing chronic stress because, among other things, it reduces stress-related food cravings by lowering serum cortisol levels.

42. The studies also have shown that KSM-66 can improve sleep efficiency, total sleep time, and sleep quality.

43. During exercise, ashwagandha is believed to improve energy supply to muscles, supporting cardiorespiratory endurance and strength. Studies have shown that KSM-66 could improve muscle size and strength as well as supporting natural testosterone production in men. For example, one study by Wankhede et al. (2015) studied the possible effects of 600 mg/day of KSM-66 on muscle mass and strength in healthy young men engaged in resistance training in an 8-week, randomized, prospective, double-blind, placebo-controlled clinical study of 50 male subjects. The authors saw the KSM-66® group demonstrated significantly greater increases in muscle strength, muscle size, testosterone level, and reduction of exercise-induced muscle damage.

44. Another study by Pérez-Gómez et al. (2020) was a meta-analysis of several randomized controlled trials of ashwagandha and its effects on VO₂ max, a physiological parameter defining aerobic capacity. The meta-analysis included a total of four studies with 142 young, healthy adults or athletes. The authors concluded that Ashwagandha supplementation may be useful in improving the VO₂ max in athletic and non-athletic young adults.

45. Furthermore, ashwagandha is known as an ancient aphrodisiac. KSM-66 has been shown to support sexual function and wellness in both men and women.

46. As a result of the substantial clinical research that has been conducted, the following claims are substantiated for KSM-66 when used at 600 mg/day, which is the amount in a recommended daily serving of Goli Nutrition's Ashwa gummies:

- a Helps to reduce stress and anxiety.
- b Helps to promote relaxation.
- c Helps to improve the quality of sleep.
- d Helps to reduce and maintain normal cortisol levels.
- e Helps in the calming down of the body and mind.
- f Helps to improve memory.
- g Helps to improve learning (adaptation and recognition of systematicities).
- h Helps to improve alertness (rapidity of recognizing changes in stimuli).
- i Helps to improve concentration (the ability to filter out distracting stimuli and increase performance speed).
- j In women, helps to increase sexual arousal, orgasm and satisfaction.
- k In men, helps the body to increase sperm concentration and volume.

- l In men, helps the body to increase and maintain healthy levels of testosterone.
- m Helps to boost stamina and endurance.
- n Helps to increase muscle size in men.
- o Helps to increase muscle strength in men.
- p Helps to reduce body fat percentage in men.
- q Helps to control stress-related food cravings.
- r Helps to reduce and maintain healthy body weight.
- s Helps to improve overall body composition when used as part of a healthy diet and exercise program.

47. Accordingly, in Canada, Health Canada granted KSM-66 a Natural Product Number (80102381) for the following claims when used at 600 mg/day:

- a Helps to increase resistance to stress/anxiety in individuals with history of chronic stress, thereby improving their overall quality of life.
- b Athletic support or Workout/Exercise supplement.
- c Helps promote healthy testosterone production in males.
- d Helps support physical aspects of sexual health in women.
- e Traditionally used in Ayurveda for memory enhancement.
- f Traditionally used in Ayurveda as Rasayana (rejuvenative tonic).
- g Traditionally used in Ayurveda to relieve general debility, especially during convalescence or old age.

- h Traditionally used in Ayurveda as a sleep aid. Used in herbal medicine as an Adaptogen to help increase energy and resistance to stress (e.g., in case of mental and physical fatigue related to stress).
- i Helps support libido.
- j Helps support emotional aspects of sexual health.
- k Helps to support thyroid function in people with hypothyroidism.
- l Helps in the function of thyroid gland in people with hypothyroidism.
- m Helps promote physical performance in previously untrained individuals when combined with regular resistance training.
- n Helps to support aerobic endurance.
- o Helps to improve the quality of sleep.
- p Helps to relieve restlessness and/or nervousness (calmative).

C. Superfruits and Supergreens Gummies

48. Goli Nutrition launched its third product, Superfruits gummies, in the United States on May 21, 2021. Goli Nutrition's Superfruits gummies are formulated with bamboo shoot extract, vitamins A, C and E, and a "super fruits" blend. Goli Nutrition selected these ingredients because they are known to support overall wellness and help promote collagen production.

49. Bamboo shoot extract is a rich source of natural silica, commonly referred to as bamboo silica, a trace mineral that supports the production of collagen. Collagen, the second most abundant substance in the human body, helps the skin maintain its structure and integrity. For example, collagen plays an important role in maintaining skin's elasticity. Bamboo shoot extract is often used to reduce skin roughness and can improve the overall appearance of skin.

50. Vitamin A is a fat-soluble vitamin that plays an important role in supporting a healthy immune system and maintaining vision. It also is a powerful antioxidant that helps reduce free radicals within the body.

51. Vitamin C is well-known for its powerful antioxidant activity and immune support capabilities. It also aids with collagen production which can improve skin's elasticity and overall appearance.

52. Vitamin E is a fat-soluble vitamin that supports immune health and maintains healthy eyes. It also is a powerful antioxidant that helps reduce free radicals within the body.

53. Goli Nutrition launched its fourth product, Supergreens gummies, in the United States on September 21, 2021. Goli Nutrition's Supergreens gummies are formulated with thiamin (vitamin B1), vitamins A, B12 and B6, and a "super greens" and probiotic blend, among other nutrient-rich ingredients.

54. Thiamin is a water-soluble vitamin, also known as vitamin B1, that plays a significant role in energy metabolism and the maintenance of a healthy nervous system.

55. Vitamin B6 is a water-soluble vitamin that helps support a healthy nervous system and performs numerous functions throughout the body which support overall good health and wellbeing.

56. As discussed above, vitamins A and B12 provide numerous benefits. For example, vitamin A helps support a healthy immune system, and vitamin B12 helps support cellular energy production and healthy metabolic energy.

57. The "super greens" blend in Goli Nutrition's Supergreens gummies includes, among other ingredients, artichoke leaf extract derived from globe artichoke, which has been used both traditionally and clinically to support healthy liver function and digestion.

D. Goli Bites

58. Continuing to lead with innovative wellness products, Goli Nutrition recently developed and brought to market several new products called “Goli Bites,” chewable supplements with a milk chocolate vanilla cocoa flavor and a fluffy nougat center packed with essential vitamins and nutrients.



(Image of Goli Bites)

59. By combining a revolutionary chocolate flavor profile with high-quality, proven ingredients, consumers can truly enjoy incorporating more wellness into their daily routines.

60. Goli Nutrition began selling its Multi Bites and Calm Bites in the United States on November 9, 2021.

61. Multi Bites are formulated with a blend of vitamins including A, B3 (niacin), B5 (pantothenic acid), B6, B9 (folate), B12 C, D, E, and H (biotin). This combination of vitamins supports numerous functions throughout the body and supports overall health and wellbeing.

62. Calm Bites are formulated with KSM-66 ashwagandha and reishi mushroom. As discussed above, KSM-66 is well studied and has been shown in clinical studies to help control

stress-related food cravings, reduce and maintain a healthy body weight, improve sexual function, reduce stress and promote relaxation, improve quality of sleep, support concentration and memory, and enhance physical performance and endurance. Reishi mushroom has been used for thousands of years and has adaptogenic properties to help balance the body and mind.

63. On January 24, 2022, Goli Nutrition began selling its Energy Bites in the United States. Goli Nutrition's Energy Bites are made with guarana extract, caffeine, and vitamins B6, B9 and B12. As discussed above, these vitamins provide important benefits including to help support cellular energy production, heart health, a healthy immune system, and a healthy nervous system.

64. As Goli Nutrition expands, it continues to offer new and innovative products which are in no way in competition with those offered by diet and weight loss companies like GOLO. As a result, the allegations of competition and consumer confusion asserted by GOLO in support of its claims against Goli Nutrition in this action, which were attenuated and unsupported when ACV gummies were Goli Nutrition's only product, now lack even a shred of credibility. In recognition of this fact, GOLO has embarked upon a calculated attempt to create the false impression that it is no longer just a diet plan company catering to consumers seeking to lose significant amounts of weight, as further discussed below.

IV. GOLI NUTRITION'S ADVERTISING

65. In addition to its innovative products, Goli Nutrition's advertising and marketing campaigns have catapulted it to success in the market for nutritional supplements and has contributed to the Goli brand becoming recognized as a leading premium wellness brand.

66. Unlike companies that focus on restrictive diets and eliminating certain foods to attain rapid weight loss, Goli Nutrition embraces a holistic view of wellness and is committed to providing innovative products that make taking daily supplements simple and delicious. Goli

Nutrition's products are formulated to provide nutrients for a variety of health benefits given that consumers have different nutrition goals and ideas about how it looks and feels to be healthy. These values are reflected in Goli Nutrition's advertisements, which are targeted to the general population and feature diverse individuals.

67. Additionally, Goli Nutrition is committed to advancing evidence-based advertising claims highlighting the exceptional ingredients in its products by describing the role of a nutrient or dietary ingredient intended to affect the normal structure or function of the human body.

68. Goli Nutrition employs unique and eye-catching imagery to markets its products, typically featuring bold and pronounced colors. Goli Nutrition also incorporates text into its ads using arrows to point out different aspects of its products and icons or bullet points listing the benefits of the ingredients in its supplements. This is shown, for example, in the following excerpts from Goli Nutrition's webpage, <https://goli.com/>:







69. Goli Nutrition advertises its products on social media platforms, including Instagram and Facebook. The following examples of Goli Nutrition's social media ads demonstrate how Goli Nutrition highlights the benefits of the ingredients in its products using eye-catching imagery and designs:

**Goli**
Sponsored
ID: 194266932901797

Our BRAND NEW Goli® Supergreens Gummies are made with 11 SUPER Greens 🥬🥦🥒 including Artichoke Leaf Extract which helps maintain cholesterol levels of those already in normal range.

Only \$4.75 Now With AfterPay, 4 Installments!

Its unique super greens and probiotic blend, plus essential vitamins and nutrients, help support:

- ♥ Digestive Health
- ♥ Healthy Immune System
- ♥ Healthy Nervous System
- ♥ Healthy Liver Function
- ♥ Overall Health and Wellbeing
- ♥ Healthy Energy Metabolism

Learn more about our Supergreens Gummies here: Goli.com/supergreens

Try it first! We just launched our brand new Goli® Supergreens Gummies!

Made with Artichoke Leaf Extract plus essential vitamins and nutrients to help support:



- Healthy Liver Function
- Healthy Immune System
- Digestive Health
- Healthy Energy Metabolism



FB.COM
Only \$4.75 Now With AfterPay, 4 Installments!

Learn more



Goli

Sponsored

ID: 465434758552423

...

You're cute when you sleep! 😊 Ashwagandha helps reduce the level of the 'stress hormone', cortisol, in our body to encourage a feeling of calm. 🌙

Goli® Ashwa Gummies are made with clinically studied KSM-66® Ashwagandha to help:

😴 Quality of Sleep

♥️ Satisfaction for Women...

**Sweet dreams!
We hope we're
in them...**




goli
NUTRITION


GOLI.COM

These gummies are flying off the shelves! 🚀


Free Shipping + Money Back Guarantee!

[Learn more](#)

**Goli**
Sponsored
ID: 219726536881685

Folic Acid and Vitamin B12 help support:
 Healthy Nutrient Metabolism
 Immune Function
 A Healthy Nervous System
 Heart Health

If for any reason, you don't absolutely love our gummies, we will give you a full hassle-free refund.

 [Goli.com](https://goli.com)



**SIMPLY
THE
BEST**




ON SALE NOW!

***TRY THEM TODAY**


FB.COM
Delicious Apple Cider Vinegar Gummies

Learn more

**Goli**
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Only \$4.75 with AfterPay now, 4 Interest-Free Installments. 🥥 Goli® Superfruits Gummies contain Bamboo Silica which reduces roughness and improves overall appearance of skin!
Made with vitamins, minerals and botanicals to support:
🥥 Collagen Formation
🍓 Skin's Youthfulness
🍊 Skin Health & Appearance 🌿 Skin Structure & Elasticity ✨ Restore Radiance ❤️ Healthy Immune System

Vegan, Gluten-free, and non-GMO! 🌱




Say
hello to
glowing
skin.

Vitamins
made
delicious!

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NUTRITION
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Raise your hand if you want healthier skin!

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See you soon delicious bites with benefits! 🍫 KSM-66® Ashwagandha is shown to help reduce cortisol, a stress-related hormone, which helps control stress-related food cravings.

Our Goli® Bites are made with MILK chocolate acai berry flavor and a fluffy center - these bites are so delicious! Our superstar ingredient- KSM-66® Ashwagandha can also help to:

- ♥ Promote Quality of Sleep
- ♥ Reduce Stress & Tension


Enjoy 2 bites twice daily.

Just the good stuff! ✅

- 🚫 Trans fats?! No way, not in these bites!
- 🚫 Added preservatives?! Nope, not in these bites!

Start paying attention to ingredient labels! Our labels clearly state the ingredients used to produce our delicious bites. We don't use artificial flavors or added preservatives.

Free Shipping on all orders at goli.com/calm




GOLI.COM

- 🚫 Trans fats?! No way, not in these bites!

Free Expedited Shipping Worldwide

Learn more


**Goli**
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ONLY \$3.50 with AfterPay! 4 Payments! ❤️💳
Goli® CALM Bites - Decadent milk chocolatey bites with a fluffy nougat center, made with KSM-66® Ashwagandha to help:
REDUCE stress-related FOOD CRAVINGS.

Buy now! FREE SHIPPING

💳 Goli® Multi Bites are made with essential vitamins and nutrients which help support💳:
- Healthy Immune System
- Muscular & Bone Health
- Healthy Nervous System
- Healthy Vision


👉💳 Get Healthy, Deliciously with the ingredients in Goli® Bites!💳



**Wellness
Reinvented.**

GOLI.COM
ZERO Trans Fats 🚫 Decadent chocolate flavor
Delicious

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**Goli**
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NEW Product Alert! You just got VIP Access to our NEW Goli® Energy Bites! EXCLUSIVE NOW! 🍫🍫 Goli® has carefully formulated a salted caramel chocolate flavor combination that perfectly complements the ingredients in Energy Bites—we think you're going to love it!

🍫 Goli® Energy Bites are made with Vitamins B6, B9, & B12 which help support 🍫:

- Cellular Energy Production
- Healthy Nutrient Metabolism
- A Healthy Nervous System
- Immune Health

🍫 Bonus! Goli® Energy Bites are a salted caramel chocolate flavor that will satisfy your tastebuds! 🍫 Enjoy 1 piece daily!

🍫 Get Energized, Deliciously with the ingredients in Goli® Energy Bites! 🍫 Try them today! If you don't love them, your purchase is on us! Learn more at: [Goli.com/energy](https://goli.com/energy)


Made with Vitamins B6, B9 & B12 to help support:

✓
Cellular Energy Production

✓
A Healthy Nervous System

✓
Heart Health

... and so much more!



GOLI.COM
The World's Yummiest Energy Bites! 🍫 Vitamins B6, B9 + B12 + Guarana Extract + Caffeine Combo!
Free Shipping on Every Order!

Shop now

70. Goli Nutrition's social media advertising has been a resounding success. As of January 30, 2022, the company had 500,010 followers on Instagram and 853,654 likes on Facebook.

71. Goli Nutrition also advertises its products using a Brand Ambassador program. Social media users who agree to Goli Nutrition's terms and conditions for the Brand Ambassador program receive a unique discount code that they can share with their followers to earn commissions on sales made using the discount code. Goli Nutrition provides detailed guidance to Brand Ambassadors to ensure that their ads accurately reflect Goli Nutrition's brand messaging and other requirements. Goli Nutrition regularly monitors ads posted by Brand Ambassadors and engages with ambassadors and/or social media platforms to have non-complying ads modified or removed.

72. Goli Nutrition has achieved success as a result its partnerships with celebrities and other high-profile influencers.

V. GOLO'S DIET PROGRAM

73. As GOLO itself puts it, "GOLO was started in 2009 *with one goal in mind* – to find a solution to why people can't lose weight or keep it off." See Exhibit 3, at 1. (emphasis added).

74. GOLO touts this singular focus throughout its website, frequently referring to its offerings as "diet" and "weight loss" products. *See, e.g., id.* ("GOLO was developed to find a natural and effective weight loss solution"); *id.* (claiming, without citation or proof, that "[i]n 2016, GOLO was the 'most searched' diet according to GOOGLE."); *id.* (referring to GOLO as "a holistic system that addresses weight loss on a multi-dimensional level").

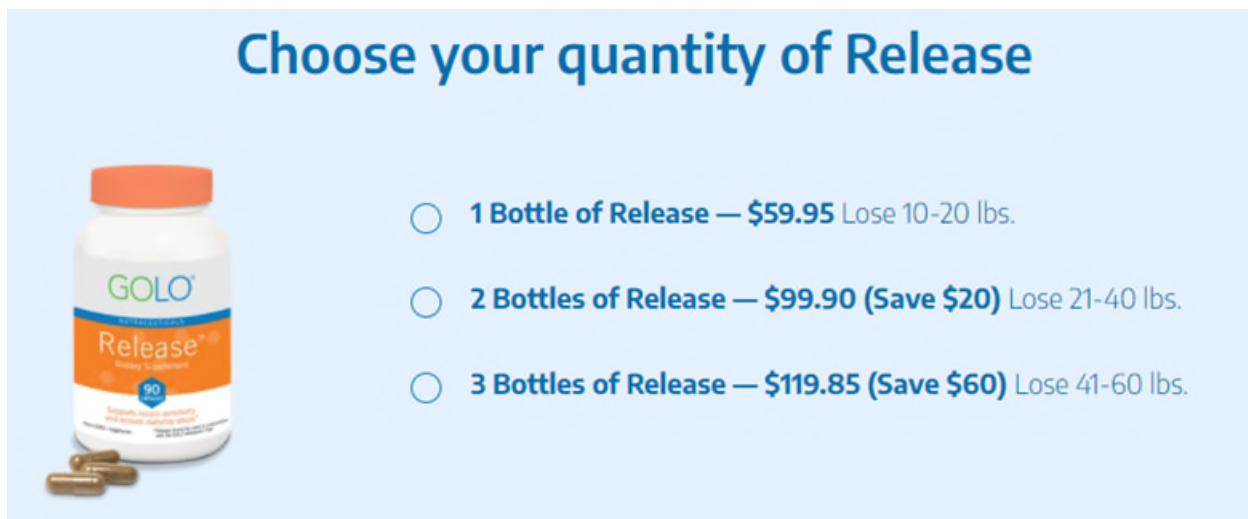
75. This Court has described GOLO and its products, including Release, in similar terms. *See* ECF 62 at 2 (referring to the Release pill as a "diet pill"); *id.* at 9 ("[GOLO's] website

homepage immediately touts the GOLO product's ability to aid in weight loss."); *id.* at 24 ("[GOLO's] weight loss product competes with *other diet plans.*") (emphasis added).

76. Like other diet companies that compete with GOLO, such as Weight Watchers or Jenny Craig, GOLO sells a diet program. The GOLO program includes a meal plan, the Release pill, and a booklet with information related to dieting, weight loss, and weight control.

77. On information and belief, GOLO manufactures, markets, promotes, advertises, offers for sale, sells and/or distributes its diet program and other products in United States commerce through its website and customer service department exclusively, using a combination of Internet, television, radio, print and digital marketing.

78. Release is the only product for sale on GOLO's "Shop GOLO" webpage, a true and correct copy of which is attached hereto as Exhibit 4. According to GOLO's "Shop GOLO" webpage, one bottle of Release costs \$59.95 and will cause the consumer to lose 10-20 pounds, two bottles of Release costs \$99.90 and will cause the consumer to lose 21-40 pounds, and three bottles of Release costs \$119.85 and will cause the consumer to lose 41-60 pounds:



(Exhibit 4, at 3.)

79. According to the Supplement Facts panel for Release, one Release capsule contains 15 mg of magnesium, 10 mg of zinc, 70 mg of chromium, and 297 mg of a proprietary blend of rhodiola extract, inositol, berberine extract, gardenia extract, banaba extract, salacia extract, and apple extract. The other ingredients listed on the label are vegetable cellulose, rice fiber, magnesium stearate (vegetable), and silica.

Supplement Facts		
Serving Size: 1 Capsule		Servings Per Container: 90
Amount Per Serving	% Daily Value	
Magnesium (as Albion™ dimagnesium malate)	15 mg	4%
Zinc (as TRAACS™ zinc bisglycinate chelate)	10 mg	91%
Chromium (as TRAACS™ chromium nicotinate glycinate chelate)	70 mcg	200%
Proprietary Blend	297 mg	
Rhodiola extract (<i>Rhodiola rosea</i> L, root), [standardized to 3% rosavins and 1% salidroside]		**
Inositol		**
Berberine extract (<i>Berberis vulgaris</i> , bark and root) [from standardized Barberry]		**
Gardenia extract 10:1 (<i>Gardenia jasminoides</i> , fruit)		**
Banaba extract (<i>Lagerstroemia speciosa</i> , leaf) [standardized to 18% corosolic acid]		**
Salaretin® Salacia extract 6:1 (<i>Salacia reticulata</i> , bark)		**
Apple extract (<i>Malus domestica</i> , fruit) [standardized to 75% polyphenols]		**
** Daily Value not established		

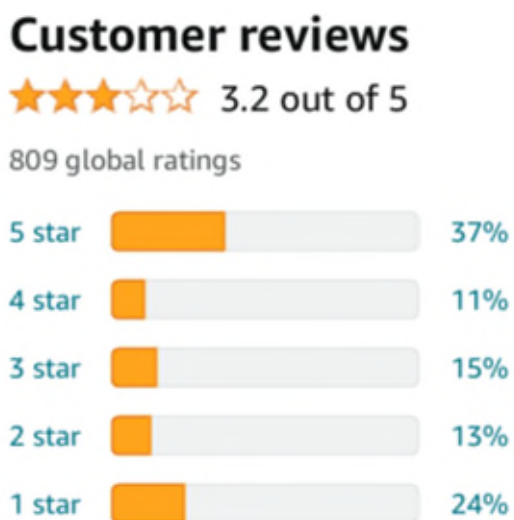
Other ingredients: Vegetable cellulose (capsule), rice fiber, magnesium stearate (vegetable), silica.

This product does not contain soy, gluten, dairy, eggs, fish, shellfish, tree nuts, peanuts or wheat.

(Exhibit 2, at 2.)

80. On information and belief, none of the listed ingredients in Release has been shown to improve weight loss.

81. Until around December 30, 2020, GOLO sold its Release diet pills on Amazon. According to the Amazon customer review webpage for GOLO's Release product, a true and correct copy of which is attached hereto as Exhibit 5, majority of the 810 customers who rated Release on Amazon (53%) gave the product a rating of three or less stars, with 24% giving a one-star rating:



(Exhibit 5, at 1.)

82. In the “Top critical review” on Amazon, the consumer stated: “The [Release] pills don’t seem to do anything,” and GOLO’s diet program “basically tells you to eat healthy and exercise twice a week.”

Top critical review

[All critical reviews](#) ›



J. Olmstead



Just eat healthy and exercise

Reviewed in the United States on January 29, 2020

The pills don't seem to do anything. You might as well take a multi-vitamin. If you're looking for something that would actually help you lose weight without doing anything else, thermogenic supplements are much better. The "program" comes with a book that basically tells you to eat healthy and exercise twice a week. I think that alone would make more sense than any pill. Let me sum up the whole program without

[Read more](#)

364 people found this helpful

(Exhibit 5, at 1.)

83. Consumers who purchase Release through the “Shop Golo” webpage receive the “GOLO Metabolic Solution,” “myGOLO,” and “Overcoming Diet Obstacles” products for no additional cost. Although GOLO represents to consumers that these additional products are worth \$50.00, \$199.00, and \$30.00, respectively, on information and belief, GOLO does not sell these products separately or at the represented values:

Lose Weight and Keep It Off Without Crash Dieting



- **GOLO Metabolic Solution — \$0.00** (A \$50 Value)
We show you how to focus on what your body needs rather than depriving yourself. Learn the simple strategies that can change your life.
- **myGOLO — \$0.00** (A \$199 Value)
Access to GOLO online resources, tools and support. Including one-on-one coaching, meal plans and recipes.
- **Overcoming Diet Obstacles — \$0.00** (A \$30 Value)
Defeat emotional eating and learn how to enjoy food again without the fear of gaining weight.

(Exhibit 4, at 3-4.)

84. The “GOLO Metabolic Solution” product, which GOLO advertises as being a \$50.00 value, is a diet meal plan that provides guidance on “CREATING GOLO MEALS.” *See* Exhibit 6.

85. The “Overcoming Diet Obstacles” product, which GOLO advertises as being a \$30.00 value, contains information related to dieting, weight loss, and weight control.

86. The “myGOLO” product, which GOLO advertises as being a \$199.00 value, is advertised as a “GOLO support community” where consumers can “[g]et the latest recipes, meal plans, community support, coaching and so much more.” *See* Exhibit 7, at 1.

87. Consumers who purchase Release through the “Shop Golo” webpage are prompted to activate their “free” myGOLO membership. The myGOLO membership gives consumers access to additional webpages not available to the general public, including a “myGOLO Shop” webpage which GOLO claims has “Exclusive Member Pricing” for additional GOLO products. *See* Exhibit 8, at 1.

88. On the “myGOLO Shop” webpage, GOLO sells Release under a heading for “SUPPLEMENTS” along with a product called “GOLO Go-Digest,” which GOLO began selling in or around August 2021. GOLO claims it created Go-Digest to “help you optimize digestion, weight loss and an improved quality of life.” *See* Exhibit 9. Additionally, GOLO claims that “[t]he Go-Digest ingredients have been shown to: [1] Support healthy gut function and normal digestion; [2] Support for food sensitivities and intolerances; [3] Promote digestive health; [4] Stimulate healthy microflora balance in the gut; [5] Promote a healthy GI tract; [6] Support bowel regularity and normal bowel movements; and [7] Helps protect against occasional constipation and diarrhea.” *See* Exhibit 9.

89. Under the heading for “HEALTHY EATING” on the “myGOLO Shop” webpage, GOLO sells its “Metabolic Plan” for \$19.95 (even though it values this product at \$50.00 on its “Shop GOLO” webpage), along with a “Super Foods Essentials Starter Kit” and “GOLO Recipe Book.” *See* Exhibit 8. In addition to a 22-page booklet titled “Super Foods Essentials” and a 35-page booklet titled “starter kit cooking instructions”, the contents of the “Super Foods Essentials Starter Kit” consist of various pantry staples including:

- (1) 8 fl. oz. bottle of GOLO® for Life® Organic Apple Cider Vinegar
- (1) 8.45 fl. oz. bottle of GOLO® for Life® Organic Extra Virgin Olive Oil
- (1) 8.45 fl. oz. bottle of GOLO® for Life® Organic Avocado Oil
- (1) 5 fl. oz. of Organic GOLO® for Life® Coconut Aminos
- (2) 8 fl. oz. cartons of Pacific Foods Organic Vegetable Broth
- (1) 4 oz. bottle of GOLO® for Life® Sea Salt
- (1) Green plastic measuring cup (4 oz. round) with GOLO for life® on handle
- (1) Blue plastic tablespoon and teaspoon “National Measure”

- (1) 8 oz. package of GOLO® for Life® Organic Green Lentils
- (1) 8 oz. package of GOLO® for Life® Organic White Quinoa
- (1) 16 oz. package of GOLO® for Life® Organic Mung Beans
- (1) 16 oz. package of GOLO® for Life® Organic Long Grain Brown Rice

See Exhibit 10.

90. On information and belief, GOLO did not begin selling bottles of apple cider vinegar as part of its “Super Foods Essentials Starter Kit,” or in any other matter, until long after Goli Nutrition asserted that GOLO’s claims against Goli Nutrition in this action lack merit in part because GOLO does not sell any product containing ACV, and until after this Court noted that GOLO sold no ACV products in its order denying GOLO’s request for a preliminary injunction. GOLO’s decision to start selling a product with ACV years after it initiated this action against Goli Nutrition, undermines the credibility of GOLO’s alleged concerns about consumer confusion and its alleged motivations for initiating this lawsuit.

91. Under the heading for “FITNESS” on the “myGOLO Shop” webpage, GOLO sells the “AeroTrainer,” which it describes as an “ergonomically contoured, 2-sided and inflatable exercise platform that helps you get into perfect form for safe and effective workouts,” and the “Perfect 5,” which GOLO describes as a “unique resistance band system that uses a combination of dynamic burst exercises to help you build endurance and lean body mass.” *See Exhibit 9, at 4-5.*

92. Under the heading for “ACCESSORIES” on the “myGOLO Shop” webpage, GOLO sells a unisex “GOLO T-Shirt” and a “GOLO Water Bottle.” *See Exhibit 8, at 5-6.*

A. GOLO’s Shifting Marketing Model

93. On information and belief, GOLO has seen a further downturn in its already lackluster business in recent years as a result of the substantial consumer shift away from

companies which focus exclusively on weight loss, like GOLO, to companies offering products which comprehensively support overall health, like Goli Nutrition. There is a waning market demand for diet products, like those sold by GOLO. The real emphasis for modern consumers is now on health.

94. GOLO is therefore attempting to rebrand its failing business as a “health and wellness” company, like Goli Nutrition, and to reframe the Release diet pills it previously marketed as weight loss pills as “nutritional supplements,” which will provide consumers with a host of benefits, including certain of the benefits actually delivered by Goli Nutrition’s products. In doing so GOLO, advances advertising claims that are false, misleading, and/or unsubstantiated. On information and belief, part of GOLO’s motivation in advancing such advertising claims is to manufacture support for the claims asserted against Goli Nutrition in GOLO’s Amended Complaint in this lawsuit and to cause injury to Goli Nutrition’s reputation and standing in the marketplace.

95. For example, GOLO previously advertised the Release pill exclusively as a weight loss product, specifically “[a] patented, insulin-controlling supplement designed to restore insulin performance, curb hunger cravings, and stop fat storage so you can lose weight and keep it off.” *See* Exhibit 1, at 2. On information and belief, weight loss was the primary advertised benefit of the Release pills until at or around the time GOLO initiated its lawsuit against Goli Nutrition.

96. More recently, GOLO has altered its advertising of the Release pills to promise a host of additional benefits, claiming that “the ingredients in Release have the unique ability to support multi-dimensional therapeutic benefits including: Increased energy and reduced fatigue; Healthier immune function; Reduced hunger and cravings; Balanced blood sugar and insulin levels; [and] Reduced stress levels and anxiety.” *See* Exhibit 2, at 1.

97. On information and belief, GOLO's motivations for altering its advertising and marketing of the Release pills in this fashion are twofold. First, GOLO altered its advertising for purposes of this lawsuit, in order to create the false perception that its products compete with those sold by Goli Nutrition when in fact they do not.

98. Second, GOLO has altered its advertising of Release pills because its promotion of a diet pill no longer appeals to consumers who are increasingly concerned with achieving better nutrition, health, and wellness over losing weight and dieting.

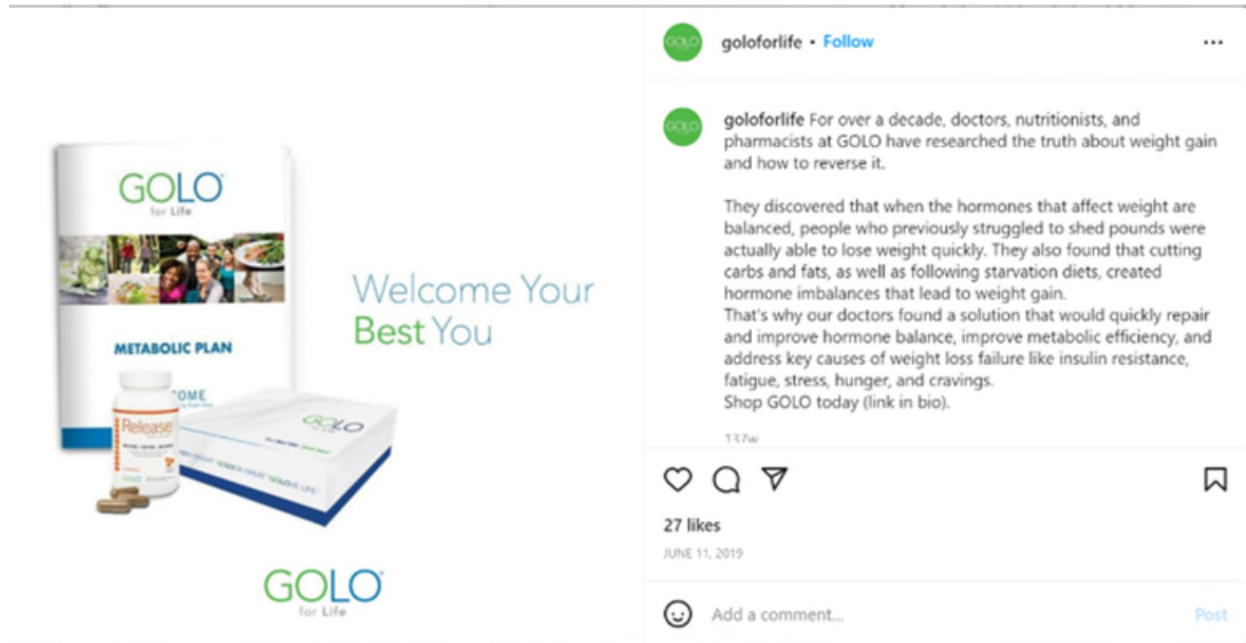
99. GOLO now seeks to mimic Goli Nutrition's advertising, including by claiming that its Release pills provide the same type of health and wellness benefits that are provided by the high-quality, substantiated ingredients used to formulate Goli Nutrition's products. However, the claims are not substantiated as to GOLO's Release pills, and therefore, GOLO's advertising claims are false and/or misleading whereas Goli Nutrition's are not. By mimicking Goli Nutrition's advertising and mischaracterizing its products as similar or equivalent to Goli Nutrition's products, GOLO is falsely suggesting to the marketplace that Goli Nutrition's products are like GOLO's failed products, thereby damaging Goli Nutrition's reputation and impeding Goli Nutrition's continued success in the marketplace.

100. GOLO has also changed its product packaging to model it after Goli Nutrition's packaging. What GOLO refers to as its "historic" packaging (*see* Complaint at ¶ 77) - which was in use until long after the time GOLO filed this lawsuit and Goli Nutrition's April 2019 launch - featured prominent use of the word "Release," a nearly all-white bottle, with small splashes of color, and a very small image of the word GOLO in the lower corner of the product label. Long after filing this lawsuit, GOLO greatly enlarged and moved the word GOLO to the top and center of the product label, copying the placement of the Goli mark on bottles of Goli Nutrition products,

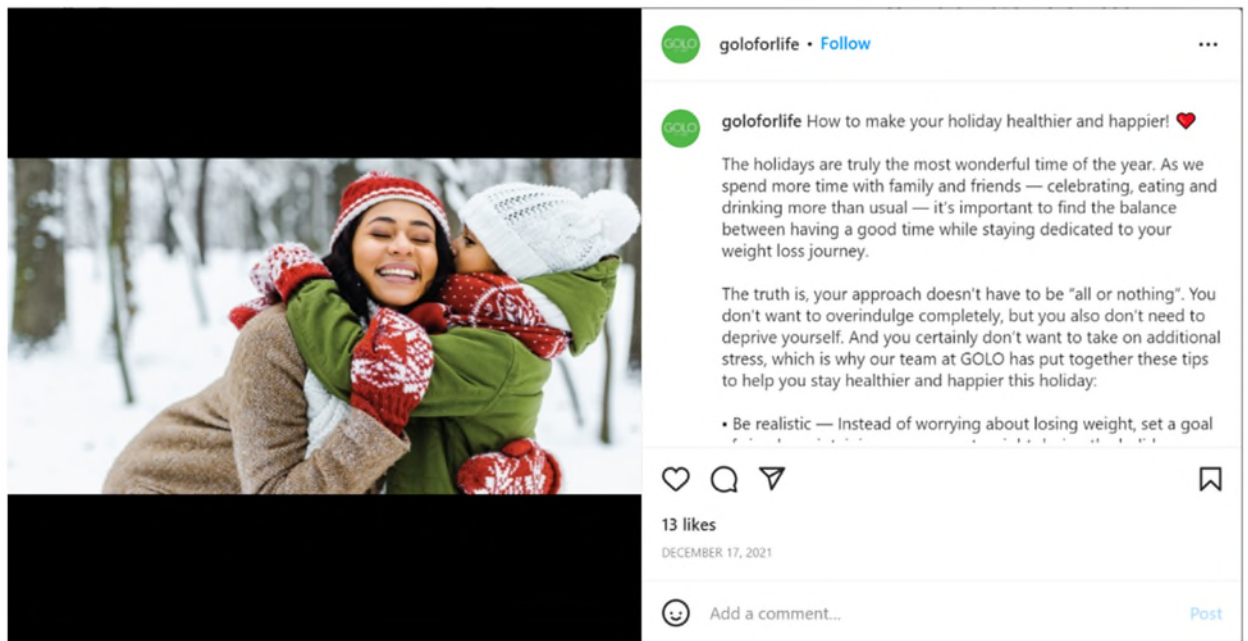
and added large blocks of color to the label, again employing design elements found in Goli Nutrition's branding.

GOLO Release Bottle, Launch to Spring 2021	GOLO Release Bottle, Spring 2021 to Present
	

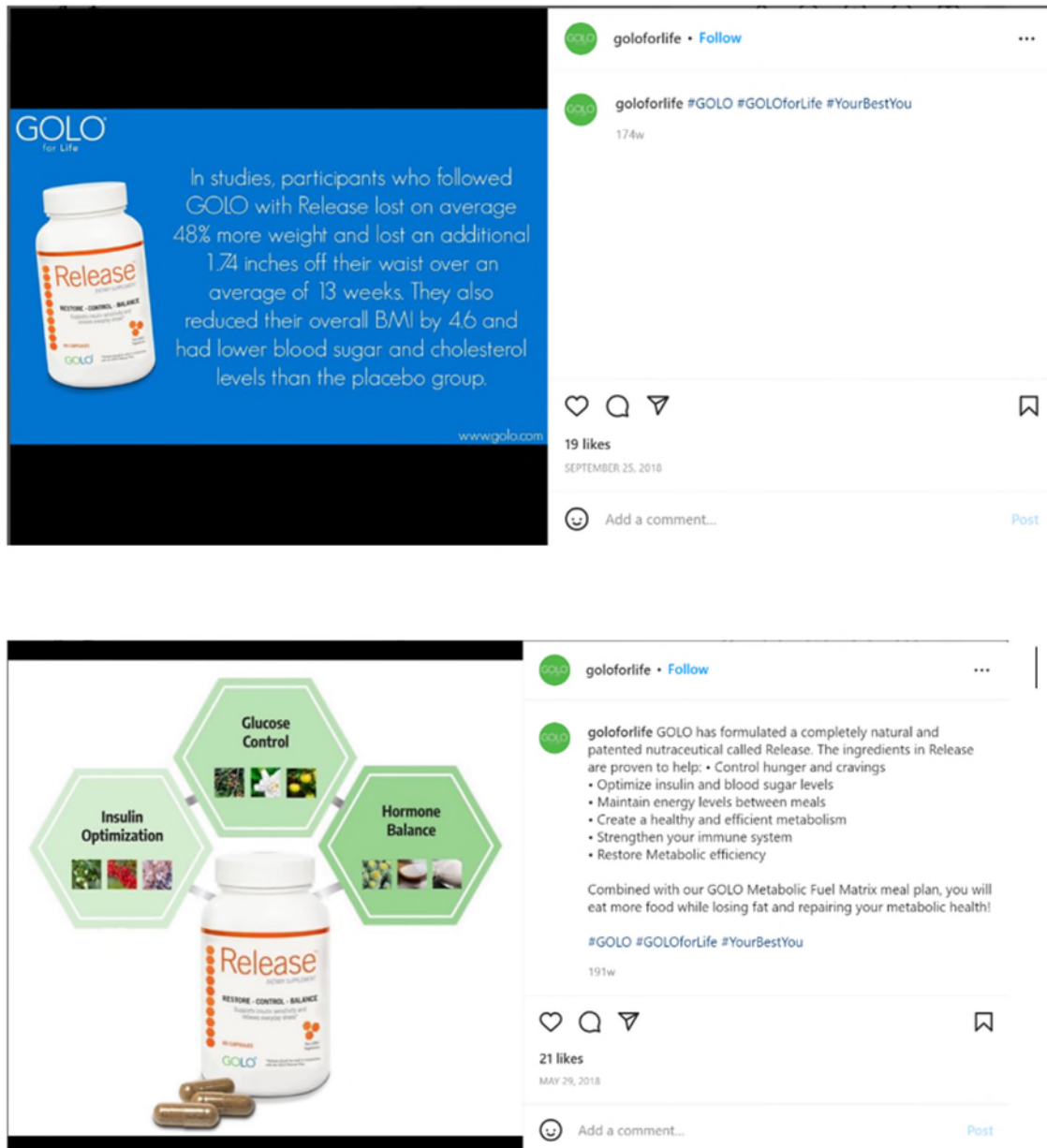
101. Prior to filing this lawsuit GOLO's advertising emphasized the utility of its products in weight loss, as shown, for example, in the below GOLO advertisement pre-dating this lawsuit:




102. More recently, and in particular since filing this lawsuit, GOLO has shifted its branding to promise that its products will more generally deliver “health” and “happiness,” as shown, for example, in the below post-suit GOLO advertisement:



103. GOLO has also copied the look and feel of Goli Nutrition's social media ads. Prior to filing this lawsuit, GOLO used social media ads like the following examples to promote its Release diet pill:



After filing this lawsuit, GOLO began advertising Release on social media using ads that mimic the look and feel of Goli's social media ads, as shown in the examples below.




GOLO
Sponsored
ID: 508954330537453


Starvation dieting? Forget about it! 🧑
We created Release to help you reach your goals and enjoy food without guilt or fear of gaining weight.

Plus, Release is designed to be phased out once you reach your goal weight. In order to maintain optimum wellness, simply continue to follow the healthy way of eating you've learned from GOLO.

Learn more about the science behind GOLO and shop Release now:
<https://bit.ly/3FnBxwd>



GOLO [Learn more](#)



Goli
Sponsored
ID: 676249740038330

Goli® Supergreens is Back in Stock!!
Our goal was to create an easy and delicious way for people to incorporate VITAMINS and MINERALS into their daily routine. 🥬
Take 2 yummy gummies, twice daily! 😊

A unique Super Greens and Probiotic blend plus essential vitamins and nutrients to help support:


- ♥ Healthy Liver Function
- ♥ Digestive Health
- ♥ Healthy Energy Metabolism
- ♥ Healthy Immune System
- ♥ Healthy Nervous System
- ♥ Overall Health and Wellbeing

Here are 3 Reasons to try these powerful gummies:

- 1) More ZINC than 26 Cups of Kale
- 2) More VITAMIN B6 than 2 Cups of Asparagus
- 3) More IRON than 8 Cups of Broccoli

Go on, try it today at goli.com/supergreens

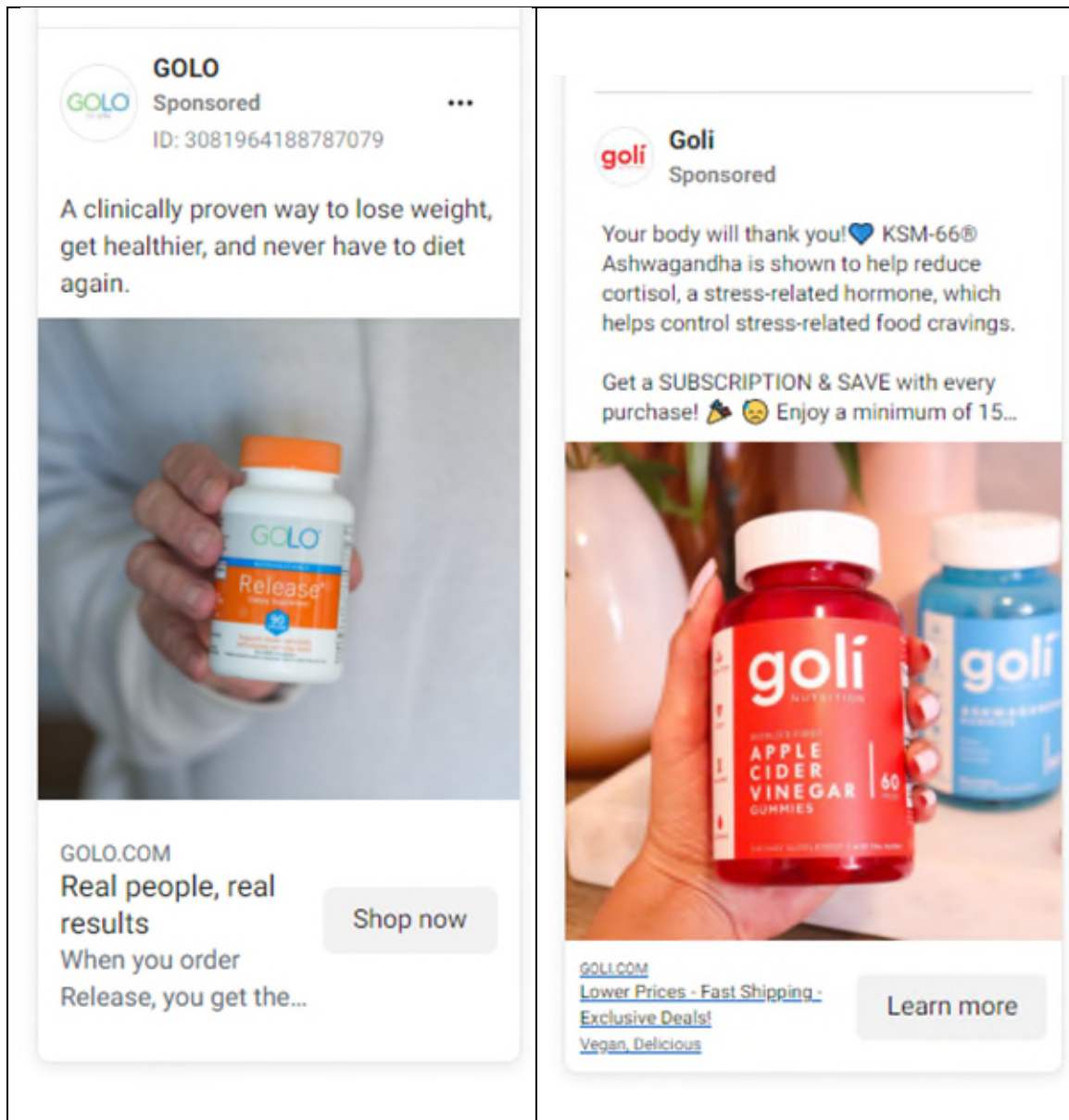
11 Super Greens Made Delicious!



Plus Vitamins and Minerals

GOLI.COM
Get your Vitamins + Minerals the...
FREE Shipping on ALL Orders

[Shop now](#)



104. Instead of its prior messaging, which focused primarily on Release as a weight loss product, GOLO now mimics Goli Nutrition’s core health and wellness messaging by suggesting that Release is “all natural” and “plant & mineral based,” and now, contrary to its prior marketing, suggests “no conventional dieting necessary.”

105. That GOLO would attempt to remodel its business and packaging after Goli Nutrition in this fashion is telling. Not only has GOLO suffered a preliminary failure in

establishing that the parties compete, where GOLO's products have floundered and failed to gain traction with consumers, Goli Nutrition has achieved a high degree of commercial success since its launch in 2019.



For example, according to the Amazon customer review page for Goli Nutrition's ACV gummies (reproduced above), 74% of the 318,562 customers who have rated Goli Nutrition's ACV gummies gave the product a five-star rating, and just 15% of reviewer gave the product a rating of less than four stars.

B. GOLO's Manufactured and Baseless Claims Against Goli Nutrition

106. As its weight loss business has declined, GOLO has increasingly devoted its time and energies to pursuing litigation, whether by manufacturing the instant litigation against a more successful company whose success it aspires to emulate.

107. GOLO has also made the foregoing changes to its advertising to manufacture baseless claims against Goli Nutrition, a far more commercially successful company, gain an unfair advantage in the market it aspires to enter, improperly interfere with Goli Nutrition's

success, diminish its unique brand presence and its strong reputation in the marketplace, and cause damage to Goli Nutrition.

108. On June 9, 2020, GOLO sought a preliminary injunction against Goli Nutrition in this action to enjoin Goli Nutrition from use of its “Goli” trademark. The parties submitted an extensive evidentiary record and briefing and appeared for argument before this Court on August 14, 2020.

109. On September 1, 2020, this Court denied GOLO’s motion in full, finding that GOLO was not likely to succeed on the merits of its claims because every confusion factor favored Goli Nutrition and that GOLO failed to establish irreparable harm. Integral to the Court’s opinion were several findings regarding the lack of competition between the parties, in particular that GOLO and Goli Nutrition do not “directly compet[e]” and describing the similarities between the parties’ products as “broadly relat[ing] to weight management, just as one might say that motorcycles and bicycles both relate to transportation.” *GOLO, LLC v. Goli Nutrition Inc.*, No. CV 20-667-RGA, 2020 WL 5203601, at *3 (D. Del. Sep. 1, 2020).

110. Several days before this Court issued its decision denying GOLO’s request for a preliminary injunction, GOLO filed a motion for leave to amend its complaint to add false advertising claims. In its proposed amended complaint, GOLO asserted that the parties directly compete.

111. Goli Nutrition opposed GOLO’s motion to amend, arguing, *inter alia*, that GOLO lacked the requisite standing to sue Goli Nutrition for false advertising because the parties do not compete and thus any advertising for Goli Nutrition’s products could not possibly harm GOLO.

112. GOLO’s allegations of harm were particularly specious because GOLO itself admitted that it was only aware of the allegedly false or misleading advertising claims because of

allegations in a proposed class action complaint filed against Goli Nutrition in the Eastern District of California, which complaint has since been dismissed.

113. After GOLO's motion was fully briefed but before this Court had ruled on it, GOLO abruptly withdrew its motion and filed that same day a separate action in the U.S. District Court for the Central District of California exclusively asserting false advertising claims (the "California Action").

114. Goli Nutrition moved to dismiss, stay, or transfer the California Action (the "First-to-File Motion") and moved to dismiss the California Action pursuant to Rules 12(b)(1) and 12(b)(6), arguing, *inter alia*, that GOLO's false advertising claims should be dismissed because GOLO lacked standing under the Lanham Act and Article III of the U.S. Constitution.

115. On July 30, 2021, the district court in the California Action granted the First-to-File Motion and stayed the case pending resolution of this action.

116. GOLO then filed a second motion for leave to amend in this action, again asserting the false advertising claims that it had raised in the California Action but now adding new factual allegations, including allegations that attempt to paint GOLO as not just a weight loss program with a diet pill (Release) but more of a health and wellness brand like Goli Nutrition. On information and belief, such allegations were intended to refute Goli Nutrition's arguments challenging GOLO's standing. In its reply brief, GOLO argued it was not required to "establish" anything at this stage of the proceeding, and that its allegations of competition and harm were sufficient to confer standing. The Court granted GOLO's motion to amend, determining that GOLO had standing to pursue its claims.

117. This is not the first time that GOLO has employed litigation for the purposes of interfering with the business of a commercially successful company like Goli Nutrition and trying

to artificially enhance the reputation of GOLO's products in order to obtain a commercial advantage.

118. GOLO has a history of asserting dubious claims for false advertising and unfair competition under the Lanham Act against its perceived competitors. For the past number of years, GOLO has employed a litigation strategy of suing its competitors (actual and perceived) alleging various novel and undeveloped theories of trademark infringement relating to its competitors' use of Search Engine Optimization that GOLO contends unlawfully diverts its potential customers.

119. On information and belief, GOLO is not genuinely concerned with promoting truth in advertising or advancing the legitimate purposes of the Lanham Act; rather, and because GOLO's products have not achieved significant commercial success on their own merits, GOLO uses the legal system, and the Lanham Act in particular, to go after those who criticize the efficacy of GOLO's weight loss products in an effort to artificially enhance the poor reputation of its products and gain a commercial advantage.

120. For example, in April 2017, GOLO filed a complaint against DietSpotlight, LLC, and Green Bracket, LLC., asserting false advertising and unfair competition claims under the Lanham Act. A true and correct copy of the complaint from that proceeding is attached hereto as Exhibit 11. In the complaint, GOLO identified itself as a "weight loss program...which aids people all over the world in achieving their weight loss goals." Exhibit 11 at 2. GOLO also identified the defendants in that action, who offer diet and weight-loss products, as "competitors of GOLO's in the diet and weight loss industry." *Id.* at 4. GOLO alleged that the defendants published a review of GOLO's diet plan on their website which contained misleading, false, and defamatory statements and testimonials that were fake, inaccurate, and/or mischaracterized. *Id.* at

12-13. GOLO further alleged that defendants' actions were intended to give their own products a competitive advantage. *Id.* at 14.

121. In July 2017, GOLO filed a complaint against ZoCo Productions, LLC, Harpo Productions, Inc., Mehmet Oz, M.D. ("Dr. Oz"), and Keri Glassman, asserting false advertising and unfair competition under the Lanham Act. A true and correct copy of the complaint from that proceeding is attached hereto as Exhibit 12. In the complaint, GOLO identified itself as a "leading weight loss program" and a "top-searched diet on Google in 2016." *Id.* at 9. GOLO alleged that Dr. Oz and Ms. Glassman had competing health-related enterprises and did not disclose their conflicts of interest before publishing a review of GOLO's diet plan on the Dr. Oz website and television show. *Id.* at 7-8. The parties reached an undisclosed settlement, and thereafter, in or around April 2019, GOLO was featured in a positive light on an episode of the Dr. Oz show. In a press release, GOLO's President stated: "We are excited that GOLO has the opportunity to detail our healthy approach to weight loss and better health with Dr. Oz. We have worked very hard for over nine years to develop a safe, affordable, and effective way to lose weight without conventional dieting." Exhibit 13. It therefore appears that, by filing this lawsuit, GOLO strongarmed the Dr. Oz show into airing a positive segment on GOLO's diet plan, even though Dr. Oz's initial review of GOLO's diet plan was not positive.

122. In September 2017, GOLO filed an action against Highya, LLC and BrightReviews, LLC, asserting false advertising and unfair competition claims under the Lanham Act. A true and correct copy of the initial complaint from that proceeding is attached hereto as Exhibit 14. GOLO again identified itself in this case as "a leading weight loss and wellness program." *Id.* at 2. GOLO alleged in this suit that the defendants used their product review websites to publish fake, negative reviews about GOLO's diet program to give the defendants'

products a competitive advantage in the marketplace. *Id.* at 16-17. The Court ultimately dismissed the suit with prejudice because GOLO failed to state a claim for false advertising, trademark infringement, or trade libel. Exhibit 15. In its supporting memorandum, the Court mentioned GOLO's "Release Supplement" only once and instead referred to GOLO's product as the "GOLO program" or "GOLO's dieting program". *Id.* at 1, 3-4, 8, 11-13. The Court expressly rejected the allegation that GOLO's diet program is a competing product to exercise equipment. *Id.* at 12. Indeed, the Court considered whether GOLO plausibly plead its Lanham Act claims and expressly noted that the initial Complaint "barely made" the necessary allegation and that GOLO's Amended Complaint "ma[de] a weak attempt to assert such a claim." *Id.* at 11. On information and belief, GOLO began selling exercise equipment after this lawsuit was filed, in part because it sought to avoid dismissal of future lawsuits of this nature.

123. In October 2018, GOLO filed its First Amended Complaint against Higher Health Network, LLC, and Troy Shanks, asserting false advertising and unfair competition claims under the Lanham Act against the defendants, who had published a negative review of GOLO's diet plan. A true and correct copy of the First Amended Complaint from that proceeding is attached hereto as Exhibit 16. GOLO identified itself in this case as "a leading weight loss and wellness program" which "promotes weight loss with a three-tier solution of dietary modification, lifestyle change..., and nutraceutical supplementation." *Id.* at 2-3. GOLO alleged that it competed with the defendants in the "diet and weight-loss industry." *Id.* at 4. GOLO's allegations of harm included that the defendants published a false and misleading review about the GOLO diet plan for their own competitive advantage. *Id.* at 13-14. The Court dismissed GOLO's First Amended Complaint due to its failure to allege false representations on the Lanham Act causes of action. Exhibit 17. GOLO then took another bite at the apple and filed a Second Amended Complaint in

February 2019. Exhibit 18. The matter settled before that Second Amended Complaint could be tested. Exhibit 19.

124. It is telling that, in these prior lawsuits (as well as other lawsuits not discussed herein), GOLO consistently described its products as weight loss products and identified its competitors as others engaged in the sale of diet plans and other weight loss specific products. Only after initiating this lawsuit against Goli Nutrition, as part of its improper scheme to manufacture justiciable causes of action against Goli Nutrition for false advertising and unfair competition, and to cause reputational injury and harm to Goli Nutrition in the process, has GOLO rebranded itself as a “health and wellness” company that sells a “dietary supplement” intended to provide many other health benefits, not only weight loss. In reality, GOLO is and always has been a diet plan and weight loss company, just like it has alleged itself to be in its many other litigations and throughout its marketing and other literature.

125. As noted above, GOLO’s practice of changing its business model in order to enhance its litigation positions is not new. Just as GOLO started selling exercise equipment after its complaint was dismissed in part because it did sell such goods, here, GOLO is trying to rebrand itself as a supplements company when in fact it is a weight loss company that sells a weight loss program.

126. GOLO’s litigation history demonstrates its true motive in filing suit against Goli Nutrition. Unable to achieve commercial success anywhere close to that which Goli Nutrition has achieved as a result of its innovative and in-demand products, GOLO has turned to the courts once again, trying to use the legal system as a sword against their perceived commercial adversary with the goal of significantly harming Goli Nutrition’s reputation in the industry and with its customers and prospective customers.

GOLO'S FALSE AND MISLEADING ADVERTISING

127. GOLO makes numerous false and misleading representations regarding the nature, characteristics, and/or properties of GOLO's diet program and weight loss products.

128. Among the most serious of GOLO's false and misleading claims are its claims that its products, including Release, can mitigate, treat, cure, or prevent disease. The FDA does not permit the use of disease claims such as these in connection with advertising for a dietary supplement.

129. The FDA defines "disease" as "damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g., hypertension); except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition." 21 C.F.R. § 101.93(g).

130. Generally, a statement is a disease claim if it states explicitly or implicitly that the product:

- a has an effect on a disease, a characteristic sign or symptom of a disease, or an abnormal condition that is either uncommon or can cause significant harm;
- b has an effect on a disease by implication through, for example, the product name, an ingredient in the product, citation to literature referencing a disease or other product label details implying connection to a disease;
- c is a substitute for, is similar to, or augments a product that does diagnose, treat, or prevent a disease;
- d has a role in the body's response to a disease; or

e treats, prevents, or mitigates adverse events associated with a therapy for a disease, if the adverse events themselves constitute diseases.

131. GOLO describes Release as “the Natural Solution to Insulin Resistance” and claims that it “helps control insulin.” Exhibit 20, at 3; *see also id.* (“If you’re at risk of Insulin Resistance, GOLO has a natural solution to optimize your metabolism and help reverse Insulin Resistance, promote weight loss and improve your health — safely and quickly.”)

132. Insulin, a hormone that the pancreas makes, allows cells to absorb and use glucose. In people with insulin resistance, the cells are unable to use insulin effectively.

133. When the cells cannot absorb glucose, or blood sugar, its levels build up in the blood. If glucose levels are higher than usual but not high enough to indicate diabetes, doctors call this prediabetes. Prediabetes often occurs in people with high insulin resistance.

134. In a person with prediabetes, the pancreas works increasingly hard to release enough insulin to overcome the body’s resistance and keep blood sugar levels down. Over time, the pancreas loses its ability to release insulin, and this can lead to the development of type 2 diabetes.

135. Accordingly, insulin resistance is linked to prediabetes and type 2 diabetes.

136. Insulin resistance is also linked to vascular diseases, such as heart disease, kidney disease, Alzheimer’s disease, and polycystic ovary syndrome (PCOS), among other diseases.

137. In fact, GOLO explicitly states that insulin resistance causes numerous diseases, including diabetes, heart disease, and Alzheimer’s:

What is Insulin Resistance?

Insulin is a hormone that directly affects metabolism, weight gain, aging and overall health.

Your insulin's effectiveness is affected by unbalanced diets which increase glucose levels and spike insulin levels causing excess glucose to be stored as fat. Unhealthy insulin levels lead to Insulin Resistance, pre-diabetes and type 2 diabetes, and other serious health conditions including heart disease and Alzheimer's.

Insulin Resistance can also trigger stress and anxiety, cause fatigue, hunger and cravings, poor sleep quality and other symptoms — all which drive emotional decisions like overeating, bingeing and cravings for fatty or high sugar foods.

(Exhibit 20, at 2)



Insulin Resistance

Insulin is one of the most important hormones in your body because it directly affects metabolism, weight gain, aging, and overall health.

Everyone needs good insulin levels to stay healthy regardless of age. Insulin's performance is affected by unbalanced diets which increase glucose levels, causing excess glucose to be stored as fat. Unhealthy insulin levels lead to Insulin Resistance, prediabetes, type 2 diabetes, and other serious health conditions including heart disease and Alzheimer's.

Reducing Insulin Resistance allows the body to release stored fat and improves your overall health.

(Exhibit 21, at 2)

138. These claims are false and/or misleading because that state that GOLO's products have an effect on specific diseases, as well as symptoms of those diseases.

139. GOLO even goes as far as providing a questionnaire to consumers to "diagnose" insulin resistance, implying that it's products are a substitute for, is similar to, or augments a product that does diagnose, treat, or prevent diseases associated with insulin resistance

Do you experience any of these indicators of Insulin Resistance

<input type="checkbox"/> Excessive abdominal fat (belly fat)	<input type="checkbox"/> Slow metabolism	<input type="checkbox"/> Pre-diabetic or type 2 diabetic
<input type="checkbox"/> Weight gain or difficulty losing weight	<input type="checkbox"/> Hunger and cravings between meals	<input type="checkbox"/> Thyroid or other autoimmune disorders
<input type="checkbox"/> Fatigue or low energy	<input type="checkbox"/> On medications	<input type="checkbox"/> PCOS or Fertility problems
<input type="checkbox"/> Stress, anxiety or depression	<input type="checkbox"/> High blood pressure	
<input type="checkbox"/> Sleeplessness	<input type="checkbox"/> High cholesterol or triglycerides	

Low Risk **Severe Risk**

Your Risk for Insulin Resistance

(Exhibit 20, at 2-3)

140. Additionally, GOLO falsely implies that Release can be used to treat "metabolic dysfunction."



GOLO Release

The GOLO Release supplement has been shown through scientific research to be safe and effective in providing powerful metabolic support for your body while it is in the process of healing metabolic dysfunction.

See Exhibit 23.

141. A metabolic dysfunction occurs when the metabolism process fails and causes the body to have either too much or too little of the essential substances needed to stay healthy. A metabolic dysfunction can take many forms, including a disease in the liver, pancreas, endocrine glands, or other organs involved in metabolism. Therefore, by stating that its products “heal”

metabolic dysfunction, GOLO is advancing an impermissible disease claim by stating that its product has an effect on a disease or a characteristic sign or symptom of a disease. Additionally, the claim is an impermissible disease claim because it suggests that Release is a substitute for, is similar to, or augments a product that does diagnose, treat, or prevent diseases associated with metabolic dysfunction.

142. Furthermore, GOLO claims that Release will defend against “infectious illness and disease,” including “colds, flus and other serious illness.” See Exhibit 24. The clear implication from this advertising is that taking Release will prevent, treat, cure, or mitigate colds, flus, and other infectious illnesses and diseases, including SARS-CoV-2 (COVID-19).

Boost Your Immune System with GOLO

**BUILDING A STRONG IMMUNE SYSTEM IS YOUR BEST DEFENSE AGAINST
INFECTIOUS ILLNESS AND DISEASE AND CAN BE THE SECRET WEAPON IN
STAYING HAPPY AND HEALTHY.**

Your immune health depends on the lifestyle choices you make every day. GOLO works to support your body's natural ability to defend itself against colds, flus and other serious illness that may come your way – while helping you shed unwanted weight.

(Exhibit 24, at 1)

143. On information and belief, GOLO created its “Boosts Immunity” webpage in or around 2021 for the purpose of preying on consumers’ concerns regarding the ongoing COVID-19 pandemic by advancing unsubstantiated and impermissible claims that imply GOLO’s products are effective in treating, mitigating, curing, or preventing COVID-19. These false and misleading claims are particularly harmful because they have the tendency to encourage consumers to use

GOLO's products instead of vaccines, treatments, and/or therapies which are proven effective in treating, mitigating, curing, or preventing COVID-19.

144. Additionally, GOLO impermissibly claims that its products can “avoid, reduce or eliminate” the need for consumers to take weight-related medications, as shown in the example below.

The GOLO Metabolic Solution shows you how easily you can lose weight by eating more food and eliminating conventional dieting. By taking Release and following our simple Metabolic Solution, you'll lose weight and experience more energy and better overall health without feeling hungry or depriving yourself.

You get our 'experts in a box' and everything you need to help you reach your weight loss goals and improve your health. You'll learn how to:



Lose weight **without counting calories** or cutting food groups



Eat out without gaining and **enjoy food again**



How to **manage the triggers** that cause emotional and stress eating



Avoid, reduce or eliminate weight-related health conditions and medications



Save thousands of dollars each year on your food bill

(Exhibit 20, at 6)

This is yet another example of the numerous unlawful disease claims being advanced by GOLO on its website. Such claims are also impermissible because, even if not disease claims, they are

qualified health claims that require pre-approval by FDA, which approval GOLO has not received.

145. GOLO also advances false and misleading claims in advertising the alleged benefits of its products, including claims that its products are “proven” or “clinically proven” to deliver certain benefits.

146. For example, on its homepage, a true and correct copy of which is attached hereto as Exhibit 20, GOLO claims, among other things, that “Release is clinically proven to enhance weight loss and improve key health indicators.”

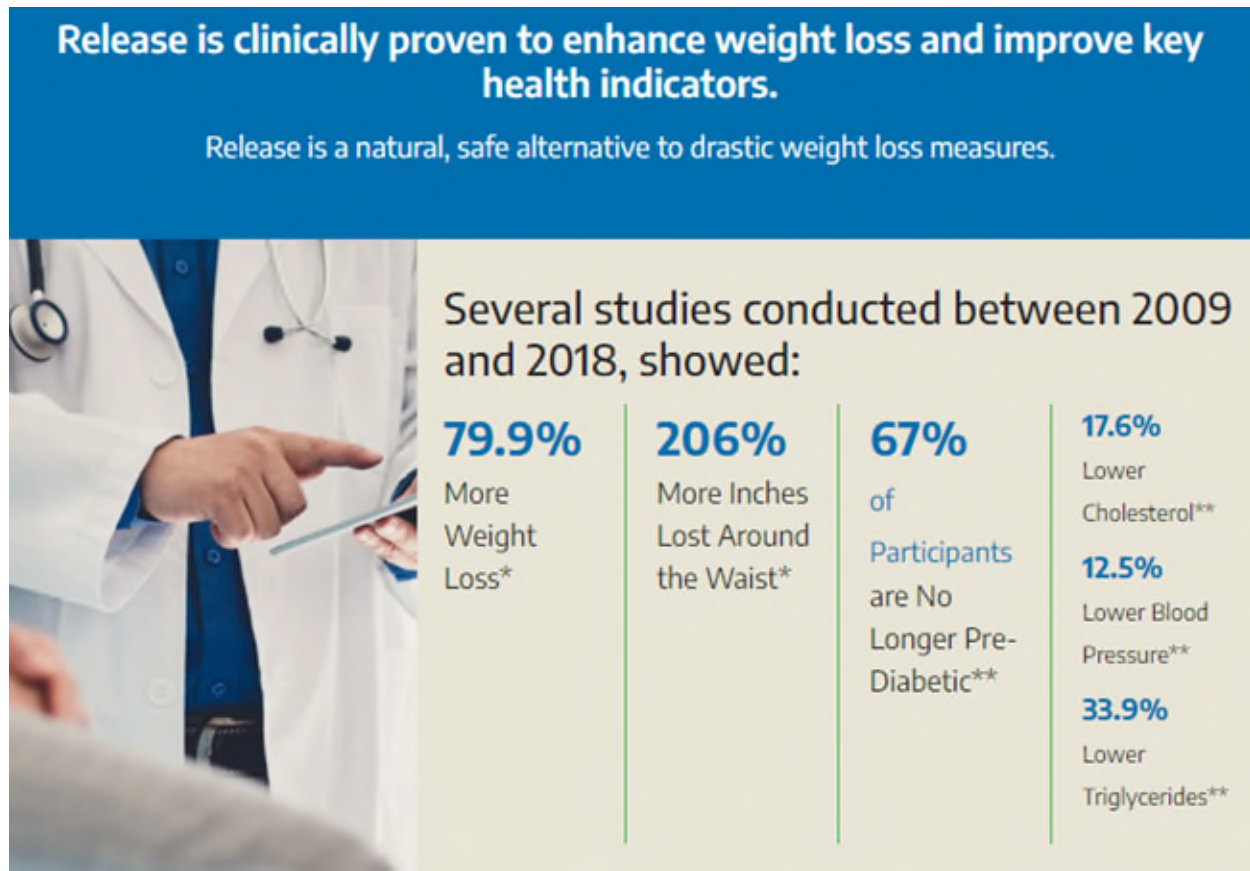
Release is clinically proven to enhance weight loss and improve key health indicators.

Release is a natural, safe alternative to drastic weight loss measures.

147. On its “Boosts Immunity” webpage, a true and correct copy of which is attached hereto as Exhibit 24, GOLO claims, among other things, that the Release product is “proven” to “protect cells against the oxidative effect and cell damage caused by free radicals.”

148. Furthermore, GOLO claims that “Release is clinically proven to work” followed by, “several studies conducted between 2009 and 2018, showed:

- 79.9% More Weight Loss
- 206% More Inches Lost Around the Waist
- 67% of Participants are No Longer Pre-Diabetic
- 17.6% Lower Cholesterol
- 12.5% Lower Blood Pressure
- 33.9% Lower Triglycerides”



(Exhibit 20)

149. All such claims must be substantiated by competent and reliable scientific evidence. The FTC defines this as: “tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.”

150. Competent and reliable scientific evidence typically requires randomized, controlled, double-blind studies that have been scrutinized by peer review during the publication process. The evidence must also be relevant to the claim, meaning the study endpoints must match the claim. Additionally, for a benefit to be advertised as “proven” or “clinically proven,” the

published results should be capable of being independently replicated by others using rigorous experimental design and data collection practices.

151. GOLO links to four studies on its website (together, the “Claimed GOLO Studies”). When viewed in their totality, the Claimed GOLO Studies do not substantiate the “clinically proven” and “proven” claims advanced by GOLO for at least the reasons discussed below.

152. GOLO funded each of the Claimed GOLO Studies and, on information and belief, participated in conducting each of the Claimed GOLO Studies. Therefore, the Claimed GOLO Studies have a high risk of bias.

153. In the Claimed GOLO Studies, the participants were instructed to follow the GOLO eating plan and GOLO exercise plan, in addition to supplementing with Release. Therefore, it is unclear whether the Release pill specifically caused weight loss or simply the combination of diet, exercise, and behavioral modifications resulted in weight loss. Although one of the Claimed GOLO Studies attempts to isolate the impact of Release by instructing both the intervention and control group to follow the GOLO diet program and supplementing the intervention group with Release whereas the control group was administered a placebo, the researchers did not monitor how closely study participants followed the meal plan and exercise restrictions. Specifically, the study does not indicate what the study participants ate or how much they exercised while participating in the study. It is therefore entirely plausible that the results of the intervention group and control group were due to how much the respective members ate and exercised, and not whether or not they received Release or the placebo. This design flaw also makes it impossible or impractical for others to independently replicate the published results.

154. The other Claimed GOLO Studies did not have placebo groups. *See, e.g.,* Exhibit __ (“[T]he study was open-label and lacks the rigor of a double-blinded placebo-controlled

study.”) To be able to use a clinical study to substantiate an advertising claim, there must be a statistically significant difference between the intervention group and the placebo group because this helps scientists assess whether study results are attributable to the intervention in question. Therefore, these studies cannot substantiate GOLO’s advertising claims.

155. The GOLO website refers to two studies that were published in journals. In the first of those studies, a researcher paid by GOLO purported to assess the effectiveness of the GOLO diet plan on measures of weight and glycemic control. *See* Exhibit ___ at 1. The study lasted 13 weeks; only 16 out of 26 subjects completed the trial. *See id.* The study purported to find “statistically significant” reductions in weight and in “HOMA-IR, a measure of insulin resistance” in the 16 participants who completed the trial (however, the study did not find any “statistically significant” reductions in insulin levels). *See id.* However, the study included important qualifications which GOLO does not make clear to consumers in its advertising and representations to consumers, including that weight loss and improvement in glycemic control occurred *only* when the GOLO weight program and Release pills were “*added* to standard anti-diabetic medications.” *Id.* at 5 (emphasis added).

156. GOLO falsely states or implies in advertising that in all studies, published or not, the Release pill is clinically proven to have *caused* the results reported in those studies. This claim is unsubstantiated. While every study mentioned caloric intake, they did not report comparative data, either within subjects when there was no control group, or between groups when there was. This reflects poor research methodology and statistical analysis.

157. None of the Claimed GOLO Studies prove that the Release pill helped reduce insulin levels, blood glucose levels, or HOMA-IR, a measure of insulin resistance. Indeed, at least one of the studies explicitly noted that there were no “statistically significant” reductions in insulin

levels. *See* Exhibit ___ at 1. Multiple confounding factors were not examined in the studies. For example, there is no information regarding how well the study participants met the dietary guidelines, even though it is widely known that caloric intake is one of the most important factors for weight loss. As noted above, this design flaw is significant, and the results of the Claimed GOLO Studies do not credibly indicate that Release was responsible for the measured results. It is more plausible that the results of the studies were caused by how closely the study participants followed the calorie restriction and exercise recommendations that are part of the GOLO diet program.

158. Additionally, in each study, the changes in HbA1c do not provide meaningful benefits to consumers. On information and belief, reducing HbA1c by 0.18% and 0.61%, as was shown in the studies, is within the margin of error attributed to the method employed by the researchers.

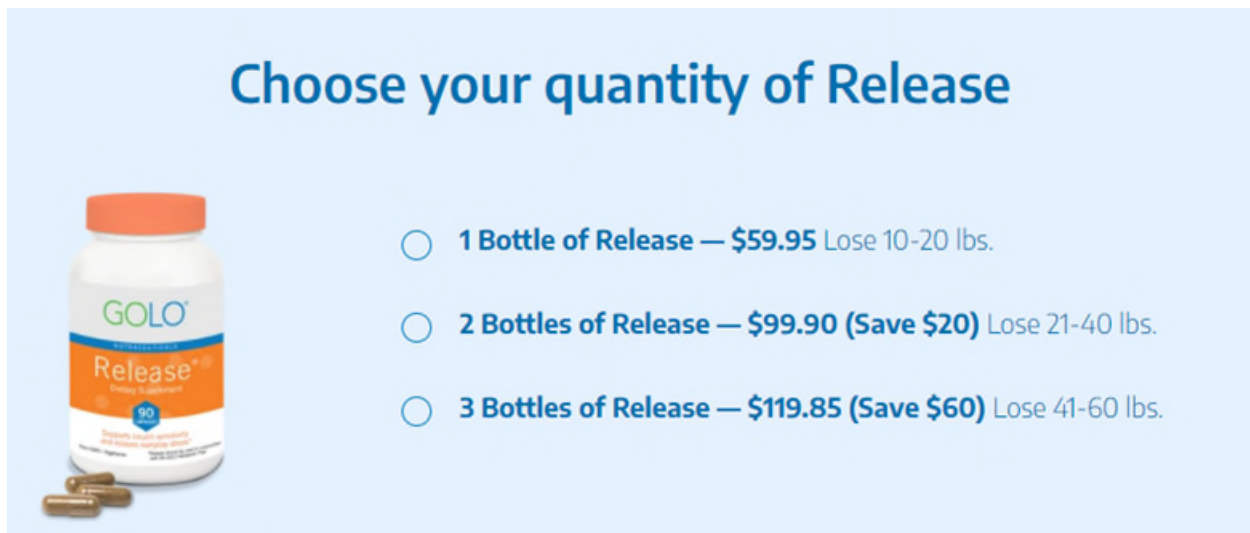
159. Additionally, the reduction in blood sugar in every trial where it was measured could be explained by exercise, which the researchers also did not account for in the analysis. Exercise can modify insulin resistance by the third time an individual works out.

160. Furthermore, each of the Claimed GOLO Studies lost up to 40% of their subjects. This significant loss of subjects was acknowledged by the authors of the Claimed GOLO Studies, but they did not explain its impact on those Studies.

161. GOLO ingredient-focused claims are also false and/or misleading. For example, on the “FAQ” page of the GOLO website, a true and correct copy of which is attached hereto as Exhibit 27, GOLO claims that “there are over 100 published independent experimental studies supporting the safety and efficacy of the ingredients in Release.” On information and belief, GOLO does not have competent and reliable scientific evidence showing that the amounts of the

ingredients in a recommended daily dosage of Release support any of the weight loss and/or health and wellness benefit claims, disease claims, and/or qualified health claims that GOLO advertises.

162. GOLO also makes false and/or misleading claims about the weight loss consumers can expect to experience taking Release. One bottle of Release has 90 capsules, and GOLO recommends taking one capsule with each meal, three times per day. Therefore, one bottle of Release lasts approximately one month. As shown below, GOLO claims that consumers taking Release can expect to lose 10-20 pounds in one month, 21-40 pounds in two months, and 41-60 pounds in three months, without competent and reliable data to support such numbers.



(Exhibit 4, at 4)

163. The weight loss GOLO claims consumers will experience is not typical of the average consumer taking Release, particularly if the consumer does not follow the other parts of GOLO's diet program. Furthermore, competent and reliable scientific evidence does not exist to substantiate GOLO's weight loss claims.

164. In fact, GOLO's advertising explicitly states that consumers do not need to "diet," even though healthy eating and calorie restrictions are an integral part of the GOLO diet program and the clinical studies cited on GOLO's website.

Stop Dieting and Start Losing Weight

GOLO avoids all of the reasons Conventional Starvation Diets fail



- NO Isolation and Deprivation
- NO Hunger and Cravings
- NO Diet Fog
- NO Diet Plateau
- NO Muscle Loss
- NO Cutting Food Groups Like Carbs
- NO More Yo-Yo Dieting

(Exhibit 4, at 2)

165. GOLO also misleads consumers by advertising testimonials who allegedly achieved results from using GOLO's products which are not typical. To avoid such testimonials from misleading consumers, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation. GOLO's advertisements do not include appropriate disclaimers. For example, on the homepage of GOLO's website it includes the following testimonials:



Debbie* lost 112 lbs in 1 year

"One day I said enough is enough and decided to take charge. GOLO helped me lose 112 lbs. in one year. My lifestyle has changed, my eating habits have changed, and my health has improved. I feel great."



Graeme* lost 131 lbs in 1 year

"I believe GOLO kept me motivated and helped me set future goals. I used to weigh 361 pounds. I've since lost 131 lbs. and 14 inches from my waist, in 52 weeks. I'm back to where I was 20 years ago, and I feel awesome. GOLO changed my life!"



Lisa* lost 50.6 lbs., 7.5 inches off her waist and eliminated arthritis medication in 37 weeks

"GOLO gave me what at one point seemed impossible! I watched the inches melt away – and couldn't believe I could eat 'real' food again"



Patrick* lost 64 lbs in 1 year

"GOLO has been life-changing – I feel and look much better and I've been able to eliminate my medication"

Courtney* lost 36 lbs. in 26 weeks

"Other programs didn't give me the tools I needed to keep the weight off... GOLO did!"

Dawn reclaimed her life and lost 75 lbs. while dropping from a size 20 to a size 8.

She noticed right away that she was losing weight, her anxiety lessened and her sleep improved. And, within a short time her health improved as well.



Jacques* lost 91 lbs. and over 16 inches from his waist in 1 year

"GOLO worked for me because I was able to maintain my weight loss. I'm bursting with energy, and I feel 20 years younger!"



Nombu* lost 48 lbs in 44 weeks

"I was able to drop 3 dress sizes and 48 pounds, I feel fantastic. Not only have I lost weight, I am healthier and have more energy now to do all the things that I love. Thank you GOLO!"

(Excerpts from Exhibit 20)

166. Although some of the above testimonials include an asterisk suggesting they may be qualified by a disclaimer, a disclaimer does not appear in close proximity to any of the above testimonials. A consumers must scroll to the very bottom of the webpage to find the following disclaimer which is printed in tiny text

*** Disclaimer:** Testimonial results were obtained over a period of three months to two years and may not be typical and your results may be more or be less than the averages stated on this website. While some people may experience greater weight loss in the first few weeks the GOLO weight loss system is designed to minimize weight loss to 1 to 2 pounds per week to minimize muscle loss. Expect an average weight loss of 1-2 pounds per week using the GOLO system. The GOLO weight loss system includes the GOLO Diet along with behavior and lifestyle recommendations including a recommendation for moderate exercise. Many of the testimonials and reviews on this site came from study participants or GOLO customers and members who followed the GOLO Metabolic Plan and also took the Release supplement. GOLO is not intended to diagnose, treat, cure or prevent any disease and has not been evaluated by the FDA. Consult your doctor before starting GOLO or any weight loss program and before reducing or eliminating any medications. For study summaries and more information and disclosures please review Studies in the Studies page and for additional disclaimers and terms and policies go to the Privacy Policy and Terms page.

(Exhibit 20, at 10)

167. GOLO further misrepresents the experiences of consumers who have tried the GOLO diet plan by advancing the following additionally exemplary advertising claims which are false, misleading, and/or unsubstantiated:

a. According to GOLO's "Proven Success" webpage, a true and correct copy of which is attached hereto as Exhibit 28, over 2 million consumers have experienced "sustainable" weight loss and improved their health simply by following the GOLO diet plan;

Proven Success

DON'T SETTLE FOR DIET FAILURE AGAIN

We know dieting has failed most of us – many of our customers have already tried the latest fad diets without success. But GOLO is different. Over 2,000,000 people have found a healthy, sustainable way to lose weight and get healthier with GOLO! Learn more about GOLO below to see how we can help you lose weight, get healthier and give up dieting for good!

b. According to the GOLO website's landing page, a true and correct copy of which is attached hereto as Exhibit 20, every week, over 20,000 new consumers "switch to" GOLO's diet plan; and

c. According to the "Shop GOLO" webpage, at GOLO has received 16,000+ independent reviews from customers, with 91% of customers giving a five-star rating. See <https://www.golo.com/pages/reviews>.

168. On information and belief, these claims are false and/or misleading because, among other things, GOLO does not receive information from each of its customers who have purchased the GOLO diet program reporting changes in their weight and/or improvements in their health and/or the length of time the customer followed the GOLO diet and/or how closely they

followed the GOLO diet, and therefore, GOLO cannot verify or confirm that two million unique customers who have purchased its products experienced “sustainable” weight loss and improved their health simply by following the GOLO diet program. Additionally, on information and belief, there are not 20,000 individuals each week who purchase the GOLO diet program for the first time and/or GOLO does not have adequate controls in place to determine whether or not a customer is a first-time customer. Furthermore, other review aggregators on websites which GOLO does not control, such as the Amazon webpage discussed above and the TrustPilot webpage available at <https://www.trustpilot.com/review/golo.com>, show far worse customer ratings for GOLO’s products than what GOLO shows on its website. This suggests that the customer reviews and ratings published on GOLO’s website have been manipulated and/or selected to artificially enhance the reputation of GOLO’s products.

169. Additionally, GOLO claims that Release causes “no unpleasant side effects.” *See* Exhibit 20. This is false. Customers have reported experiencing numerous negative side effects as a result of taking Release, including but not limited to headaches, stomach cramps, gas, bloating, fatigue, dizziness and heart palpitations. A representative sample of such reports, true and correct copies of which are attached hereto as Exhibits 5, 29-30 are reproduced below.

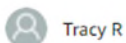


Updated Oct 12, 2021

If you have food sensitivities that...

If you have food sensitivities that cause headache and migraines do not take this product!! Based on the information on the GOLO website which stated there were no side effects, I purchased the product, read the instructions and still found no mention of any known side effects so I took the product. After getting a migraine, I looked at all the ingredients listed on the bottle of the product and most of the ingredients in the product have headaches as a side effect. It takes 7 miserable days to get the product out of your body before migraine goes away. Trust me, it happened within minutes of taking a pill of GOLO. GOLO gave me the generic you should always check blah blah when they read this review. I'm just wanting those of you who suffer like I do to be very aware before you try this product.

See Exhibit 29, at 7.



☆☆☆☆☆ **Absolutely horrible side effects**

Reviewed in the United States on December 12, 2019

Verified Purchase

Had to stop taking due to the absolutely horrific side effects. Terrible stomach cramps, gas, bloating and did not help with weight loss or curbing appetite. DO NOT BUY

87 people found this helpful

See Exhibit 5, at 2.



eregelma



Had a Strong, Negative Reaction to this Product

Reviewed in the United States on March 20, 2020

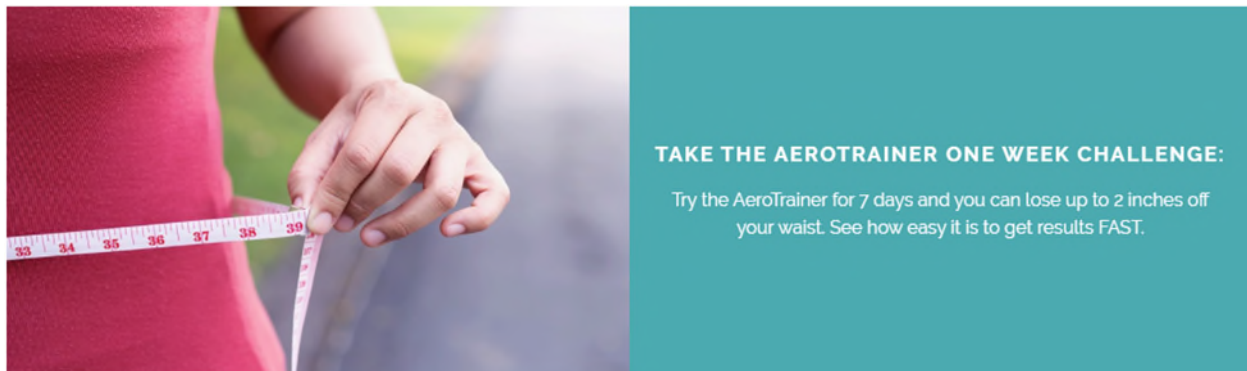
Verified Purchase

Started using GOLO on a Thursday. On Friday morning, I experienced severe Vertigo at the gym, while I was just stretching on a mat. My wife rushed me to the emergency room, where the physician suspected a severe heart condition. I was admitted to the hospital to undergo extensive testing, and specifically ordered to discontinue that med. Results of the testing all were negative, and a followup visit to physical therapy for the "balance" issue confirmed that the problem had abated. I actually still had some (minor) vertigo, lasting a few more days, but nothing since.

See Exhibit 30, at 2.

170. GOLO also makes false, misleading, and/or unsubstantiated claims about GOLO's AeroTrainer "exercise bean," including but not limited to the following:

d. Consumers can lose inches off their waist by using the AeroTrainer for just seven days.



<https://aerotrainer.com/>.

e. Consumers can "strengthen immunity," "increase energy," and "lose weight and inches" by completing "simple 5-10 minute workouts" on the AeroTrainer.

GET GREAT RESULTS IN LESS TIME



When you exercise your core and total body on the AeroTrainer with our simple 5-10 minute workouts, you'll start to look and feel better right away. No need to join a gym, suffer through long workouts and you don't even have to get down on the floor to:

- Sculpt and Tone your body
- Increase energy
- Improve overall well-being
- Lose weight and inches
- Strengthen immunity

<https://aerotrainer.com/>.

f. The AeroTrainer can be used to treat and prevent back pain.

DO YOU SUFFER FROM BACK PAIN?

BACK PAIN IS ONE OF THE MOST COMMON MEDICAL COMPLAINTS. ACTIVITIES LIKE GOLFING, WEIGHT-LIFTING AND OTHER FACTORS LIKE AGE AND POSTURE CAN CAUSE CHRONIC BACK PAIN

Stretching and strengthening your back, while building core strength, creates balance between your lower back and abdominal muscles. Regular use of the portable seated AeroTrainer can provide back support and help prevent, and lessen, common back pain by targeting the spine and its supporting muscles.



Upper Back Stretch



Back Extension



Lower Back Stretch

<https://aerotrainer.com/>.

g. Consumers can easily transform their body using the AeroTrainer.

WATCH HOW EASILY THE AEROTRAINER CAN TRANSFORM YOUR BODY — IN YOUR OWN HOME GYM



h. Consumers can lose weight and get healthier by using the AeroTrainer, even without any modification to their diet.

i. Consumers who use the AeroTrainer will improve their ability to play golf.

171. The above exemplary representations are false and/or misleading because they imply that consumers can achieve the advertised benefits without making any other lifestyle changes, such as eating healthy or reducing caloric intake, and by exercising for a short duration of time. Furthermore, on information and belief, GOLO does not have adequate substantiation for its claim that its exercise equipment can reduce back pain.

172. As GOLO's CEO, Counter-Defendant Lundin, directs, authorizes, and approves GOLO's marketing strategy, including GOLO's creation and dissemination of the advertising claims discussed herein. *See, e.g.*, Ex. 31 ("We designed the AeroTrainer as an affordable, versatile, core fitness exercise platform that can give you a full-body workout in as little as ten minutes a day,' says Chris Lundin, CEO of GOLO. 'It's a great solution for home workout and

core fitness routines as it helps strengthen and stretch muscles, reduce back pain, decrease stress, and more.”); Ex. 32 (listing Mr. Lundin as point of contact for GOLO on press release relating to one of the Claimed GOLO Studies).

173. On information and belief, Lundin was directly responsible for creating, approving, and/or disseminating each of the foregoing statements regarding the GOLO diet plan and/or GOLO’s weight loss products, including but not limited to the Release diet pill. GOLO’s “About Us” section of its webpage reflects that Mr. Lundin has over 30 years of experience in international sales, marketing and development that includes numerous successful campaigns including the Mini Max, Gold’s Gym Home Trainer, Ab Toner, Health Walker, Auto Bike, Profile Toner, LandRider and the Bean.

174. Lundin is personally liable for GOLO’s false and/or misleading statements regarding the nature, characteristics, and/or properties of GOLO’s products because, as GOLO’s CEO, he authorizes and directs the false and/or misleading statements described herein, and in many instances directly made the false statements himself. And upon information and belief, he has done so all the while knowing them to be false and/or misleading.

175. Counter-Defendants are working in concert with each other to convey the false and/or misleading statements described herein to consumers in an attempt to persuade them to buy GOLO’s products.

**GOLO’S FALSE AND/OR MISLEADING STATEMENTS MATERIALLY INFLUENCE
CONSUMER PURCHASING DECISIONS, DECEIVE CONSUMERS, AND ARE
HARMING GOLI NUTRITION**

176. Finding itself unable to keep up with the evolving shift in American attitudes that focus less on dieting and losing weight, GOLO has instead employed improper means to gain commercial advantage and has acted to hinder Goli’s growth and success, including by commencing this baseless litigation.

177. GOLO's false and/or misleading advertisements, marketing efforts or collateral, and/or oral representations outlined herein have directly caused and will continue to directly cause injury to Goli Nutrition's goodwill and business reputation.

178. By mimicking Goli Nutrition's advertising and mischaracterizing its products as similar or equivalent to Goli Nutrition's products, GOLO is falsely suggesting to the marketplace that Goli Nutrition's products are like GOLO's failed products.

179. By mimicking Goli Nutrition's advertising and mischaracterizing its products as delivering the same benefits as Goli Nutrition's products, GOLO is falsely suggesting to the marketplace that Goli Nutrition's products are like GOLO's failed products.

180. While neither the parties nor their products do in fact compete, consumers may come to believe they do based upon GOLO's false and misleading statements, particularly given that GOLO has altered the branding of its products to claim in a false and/or misleading manner that the Release pills offer many of the same benefits offered by Goli Nutrition's products, and has even changed the packaging for Release to imitate Goli Nutrition's product packaging. This has caused and will continue to cause harm to Goli Nutrition in at least the following ways.

181. Goli Nutrition has lost business opportunities and experienced reputational damage, and is likely to continue to lose partnership opportunities, as well as other business and investment opportunities as a result of GOLO's false and/or misleading advertisements, marketing efforts or collateral, and/or oral representations about its Release diet pill and additional products, which falsely create the impression that GOLO's products compete and/or deliver the same benefits as Goli Nutrition's products - *when they do not* - to both manufacture justiciable causes of action against Goli Nutrition and its President, Mr. Bitensky, under the Lanham Act and Delaware

Deceptive Practices Act, and to cause harm to Goli Nutrition's reputation and standing in the marketplace as a nutritional supplement industry leader.

182. GOLO's false and/or misleading claims in advertising its Release diet pills and other GOLO products speak to the inherent qualities and characteristics of GOLO's products, and specifically Release, namely the purported health and wellness benefits of taking Release and the ability of Release to treat, mitigate, cure, or prevent diseases or symptoms related to diseases.

183. GOLO's false and/or misleading claims are material to consumers, partners, and endorsers who purchase dietary supplements and who are considering whether to purchase GOLO's diet pill and/or to partner with and/or purchase Goli Nutrition's products.

184. Goli Nutrition has been injured as a result of GOLO's false and/or misleading advertisements, marketing efforts or collateral, and/or oral representations about the GOLO products.

185. Goli Nutrition has been injured as a result of GOLO's false and/or misleading statements about GOLO's products which were made to create the impression in the marketplace that GOLO's products compete with and/or deliver the same benefits as Goli Nutrition's products, when they do not, to both manufacture justiciable causes of action against Goli Nutrition and its President, Mr. Bitensky, under the Lanham Act and Delaware Deceptive Practices Act, and cause harm to Goli Nutrition's reputation and standing in the marketplace as a nutritional supplement industry leader.

186. GOLO's false and/or misleading representations of fact are likely to harm and diminish Goli Nutrition's goodwill, business reputation and credibility in the trade and the demand for Goli Nutrition's products because GOLO's false and/or misleading representations assert expressly and/or impliedly that Goli Nutrition is not truthful in its advertising, Goli Nutrition's

products provide the same benefits as GOLO's products, Goli Nutrition intends to deceive consumers, and that Goli Nutrition's products do not provide the benefits for which they are advertised.

187. GOLO's false and/or misleading representations of fact are likely to harm and will inevitably harm and diminish Goli Nutrition's goodwill, business reputation and credibility in the trade, and the demand for Goli Nutrition's products by customers, endorsers, promoters and business partners.

188. On information and belief, GOLO's false and/or misleading representations were made in bad faith and with intent to deceive the relevant consumers and with intent to harm Goli Nutrition.

GOLO'S INVALID TRADEMARK REGISTRATIONS

189. In its Amended Complaint, GOLO asserts ownership rights against Goli Nutrition of the following trademark registrations:

Mark/Name/ AN/RN	Status/Key Dates	Full Goods/Services
GOLO RN: 5552578 SN: 87978072	Registered, August 28, 2018 Int'l Class: 25 First Use: September 15, 2016 Int'l Class: 28 First Use: January 1, 2017 Filed: June 18, 2016 Registered: August 28, 2018 Register Type: Principal Register	Int'l Class: 25, 28 (Int'l Class: 25) Footwear; clothing, namely, shirts, pants, shorts, hoodies, jumpsuits, and hats (Int'l Class: 28) Manually-operated exercise equipment
GOLO METABOLIC MATRIX RN: 5258942 SN: 87076404	Registered, August 8, 2017 Int'l Class: 44 First Use: April 22, 2013 Filed: June 18, 2016 Registered: August 8, 2017 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight

Mark/Name/ AN/RN	Status/Key Dates	Full Goods/Services
		management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition
GOLO FUEL INDEX RN: 5235221 SN: 87077503	Registered, July 4, 2017 Int'l Class: 44 First Use: May 2, 2013 Filed: June 20, 2016 Registered: July 4, 2017 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition
GOLO LIFECARDS RN: 5133721 SN: 87088659	Registered, January 31, 2017 Int'l Class: 44 First Use: June 27, 2016 Filed: June 29, 2016 Registered: January 31, 2017 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition
GOLO RESCUE PLAN RN: 5212233 SN: 87088674	Registered, May 30, 2017 Int'l Class: 44 First Use: June 27, 2016 Filed: June 29, 2016 Registered: May 30, 2017 Register Type: Principal Register	Int'l Class: 44 (Int'l Class: 44) Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet

Mark/Name/ AN/RN	Status/Key Dates	Full Goods/Services
		planning, lifestyle wellness, health and nutrition

190. According to USPTO records, on or around June 18, 2016, GOLO filed or caused to be filed U.S. App. Serial No. 87076392 for the GOLO word mark identifying, *inter alia*, goods in International Classes 25 and 29 under Section 1(b) intent-to-use. A true and correct copy of the USPTO application file for U.S. App. Serial No. 87076392 is attached hereto as Exhibit 33.

191. According to USPTO records, on or around December 13, 2017, GOLO filed or caused to be filed a Statement of Use pursuant to 15 U.S.C. § 1051(d) asserting that the subject mark was used in connection with “Footwear; Clothing, namely, shirts, pants, shorts, hoodies, jumpsuits, and hats” in International Class 25 since at least as early as September 15, 2016, and in connection with “Manually-operated exercise equipment” in International Class 28 since at least as early as January 1, 2017. A true and correct copy of the Statement of Use for U.S. App. Serial No. 87076392 is attached hereto as Exhibit 34.

192. In support of the Statement of Use for U.S. App. Serial No. 87076392, GOLO submitted specimens purporting to show the mark “as used on or in connection with” all of the goods identified in the application “in commerce.” *See* Exhibit 35.

193. The specimens depict the GOLO mark used on t-shirts. *See* Exhibit 35. The specimens do not depict the GOLO mark used on footwear, pants, shorts, hoodies, jumpsuits, or hats. GOLO did not submit any specimens showing use of the GOLO mark in connection with footwear, pants, shorts, hoodies, jumpsuits, or hats.

194. A broad search of GOLO’s current and archived public-facing webpages, as well as webpages accessible to GOLO customers did not reveal any evidence of use by GOLO of the

GOLO mark in connection with r footwear, pants, shorts, hoodies, jumpsuits, or hats. Such search revealed only T-shirts offered for sale on the “Shop myGOLO” page. “GOLO® for Life” is printed on the front of the T-shirts in green and blue letters.

195. On information and belief, GOLO is not, and at the time the Statement of Use was filed was not, using in commerce the GOLO mark in connection with footwear, pants, shorts, hoodies, jumpsuits, or hats.

196. A signatory to a declaration under 15 U.S.C. § 1051(d) attests that the applicant or the applicant’s related company or licensee is using the mark in commerce or in connection with all the goods/services in the application or notice of allowance in order to secure registration in connection with all of the goods/services listed in the application.

197. According to USPTO records, U.S. App. Serial No. 87076392 was published in the *Official Gazette* on April 18, 2017.

198. According to USPTO records, on or around August 28, 2018, a registration certificate issued for U.S. App. Serial No. 87076392 was assigned U.S. Reg. No. 5,552,578 (the “578 Reg.”).

199. On information and belief, the ‘578 Reg. has been defective from the start because it is based on an inaccurate Statement of Use, and therefore, was not and is not entitled to registration on *void ab initio* grounds.

C. U.S. Reg. No. 5,258,942 is Invalid as *Void Ab Initio*

200. According to USPTO records, on or about June 18, 2016, GOLO filed or caused to be filed U.S. App. Serial No. 87076404 for the “GOLO Metabolic Matrix foods” word mark identifying, *inter alia*, “Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition” in

International Class 44 under Section 1(a), and identifying a first use date of April 22, 2013. A true and correct copy of the USPTO application file for U.S. App. Serial No. 87076404 is attached hereto as Exhibit 36.

201. According to USPTO records, on or around March 8, 2017, an Examiner's Amendment issued "[i]n accordance with the authorization granted by [GOLO's representative] on March 7, 2017" amending U.S. App. Serial No. 87076404 to replace "GOLO Metabolic Matrix foods" with "GOLO METABOLIC MATRIX" and to limit the identification only to "Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition" in International Class 44. A true and correct copy of the Examiner's Amendment for U.S. App. Serial No. 87076404 is attached hereto as Exhibit 37.

202. In support of U.S. App. Serial No. 87076404, GOLO submitted a specimen purporting to show the mark "as used on or in connection with" all of the goods and services identified in the application "in commerce." *See* Exhibit 36.

203. The specimen does not show a direct association between GOLO METABOLIC MATRIX and the identified services. *See* Exhibit 36. The phrase "GOLO Metabolic Matrix" appears only once on a single page in small print without emphasis and without further explanation or use of the term such as would permit consumers to associate the mark as a source identifier for the services.

204. A broad search of current and archived versions of GOLO's website and its social media accounts and the worldwide web found no evidence of the word mark GOLO METABOLIC MATRIX being used in connection with International Class 44 services.

205. On information and belief, GOLO is not, and at the time U.S. App. Serial No. 87076404 was filed was not, using in commerce the purported GOLO METABOLIC MATRIX mark in connection with any of the identified services.

206. According to USPTO records, U.S. App. Serial No. 87076404 was published in the *Official Gazette* on May 3, 2017.

207. According to USPTO records, on or around August 8, 2017, a registration certificate issued for U.S. App. Serial No. 87076404 and was assigned U.S. Reg. No. 5,258,942 (the “’942 Reg.”).

208. On information and belief, the ‘942 Reg. has been defective from the start because it is based on an inaccurate declaration of use, and therefore, was not and is not entitled to registration on *void ab initio* grounds.

D. U.S. Reg. Nos. 5,235,221, 5,133,721, and 5,212,233 Have Been Abandoned and Are Invalid

209. According to USPTO records, on or around June 20, 2016, GOLO filed or caused to be filed U.S. App. Serial No. 87077503 for the GOLO FUEL INDEX word mark identifying “Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition” in International Class 44 under Section 1(a), and identifying a first use date of May 2, 2013. A true and correct copy of the USPTO application file for U.S. App. Serial No. 87077503 is attached hereto as Exhibit 38.

210. According to USPTO records, on or around February 28, 2017, GOLO filed or caused to be filed a Response to Office Action with a substitute specimen in support of the U.S. App. Serial No. 87077503 purporting to depict use of GOLO FUEL INDEX on or in connection with Health care services for individuals, namely, weight loss program services, weight loss diet

planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition” in International Class 44.

A true and correct copy of the Response to Office Action is attached hereto as Exhibit 39.

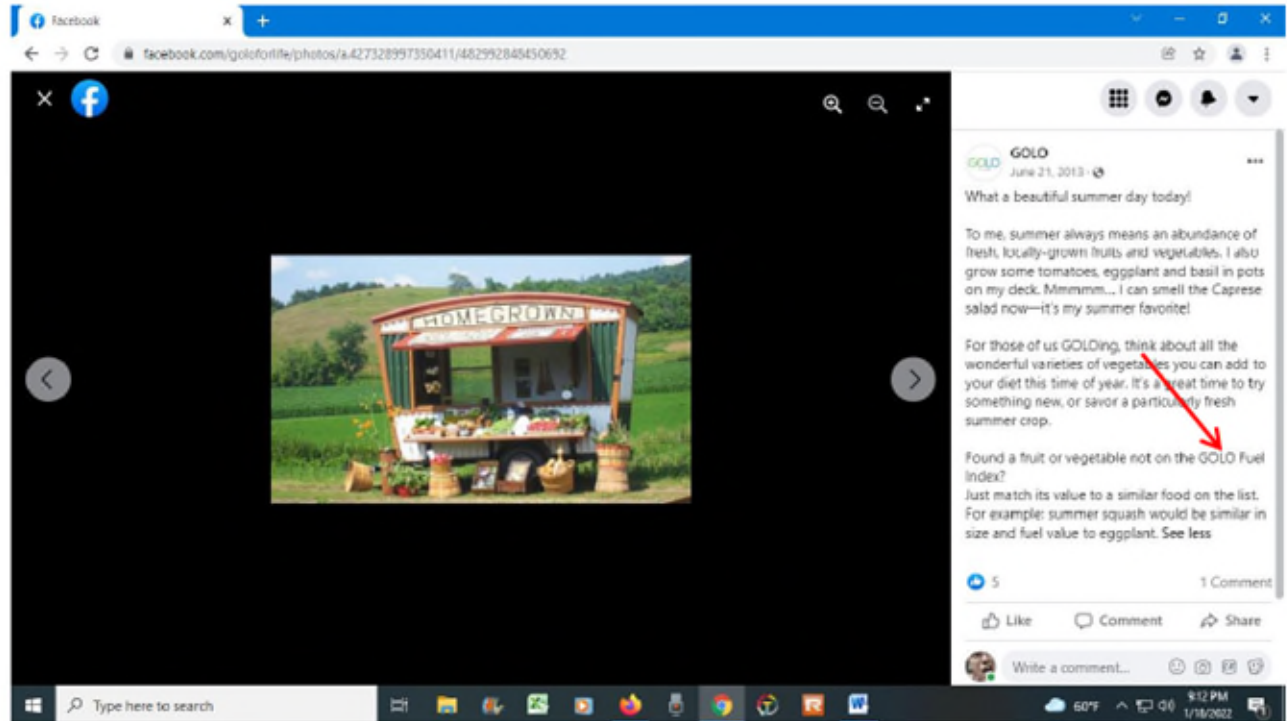
211. According to USPTO records, U.S. App. Serial No. 87077503 was published in the *Official Gazette* on March 29, 2017.

212. According to USPTO records, on or around July 4, 2017, a registration certificate issued for U.S. App. Serial No. 87077503 and was assigned U.S. Reg. No. 5,235,221 (the “’221 Reg.”).

213. On information and belief, GOLO has not continuously and consistently used the GOLO FUEL INDEX mark in connection with some or all of the services identified in the ‘221 Reg.

214. A search of GOLO’s current and archived webpages and social media accounts revealed evidence of use of GOLO FUEL INDEX on GOLO’s Facebook account on June 21, 2013 and then again on the GOLO website on December 15, 2015:

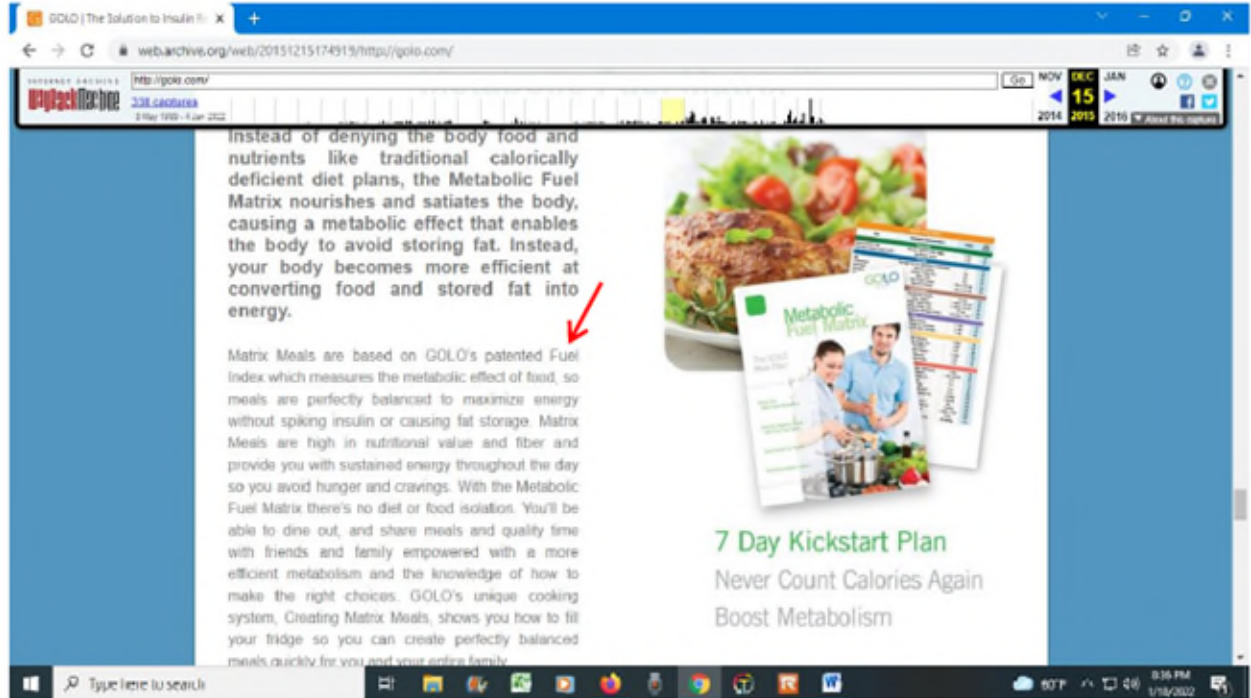
GOLO FACEBOOK (June 21, 2013)



GOLO.com Publish Date: June 21, 2013

Capture Date: 01/18/2022

URL: <https://www.facebook.com/goloforlife/photos/a.427328997350411/482992848450692>

GOLO.COM (December 15, 2015)

GOLO.com Publish Date: December 15, 2015

Capture Date: 01/18/2022

URL: <https://web.archive.org/web/20151215174919/http://golo.com/>

215. A thorough search of GOLO's current and archived websites and social media platforms failed to locate any additional uses of the purported mark GOLO FUEL INDEX.

216. On information and belief, GOLO ceased using the GOLO FUEL INDEX mark in connection with some or all of the services identified in the '221 Reg. more than three years ago.

217. According to USPTO records, on or around June 29, 2016, GOLO filed or caused to be filed U.S. App. Serial No. 87088659 for the GOLO LIFECARDS word mark identifying "Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition" in International Class 44 under Section 1(a), and identifying a first use date of June 27, 2016. In support of U.S. App. Serial No. 87088659, GOLO submitted a specimen purporting to show use of the mark in connection

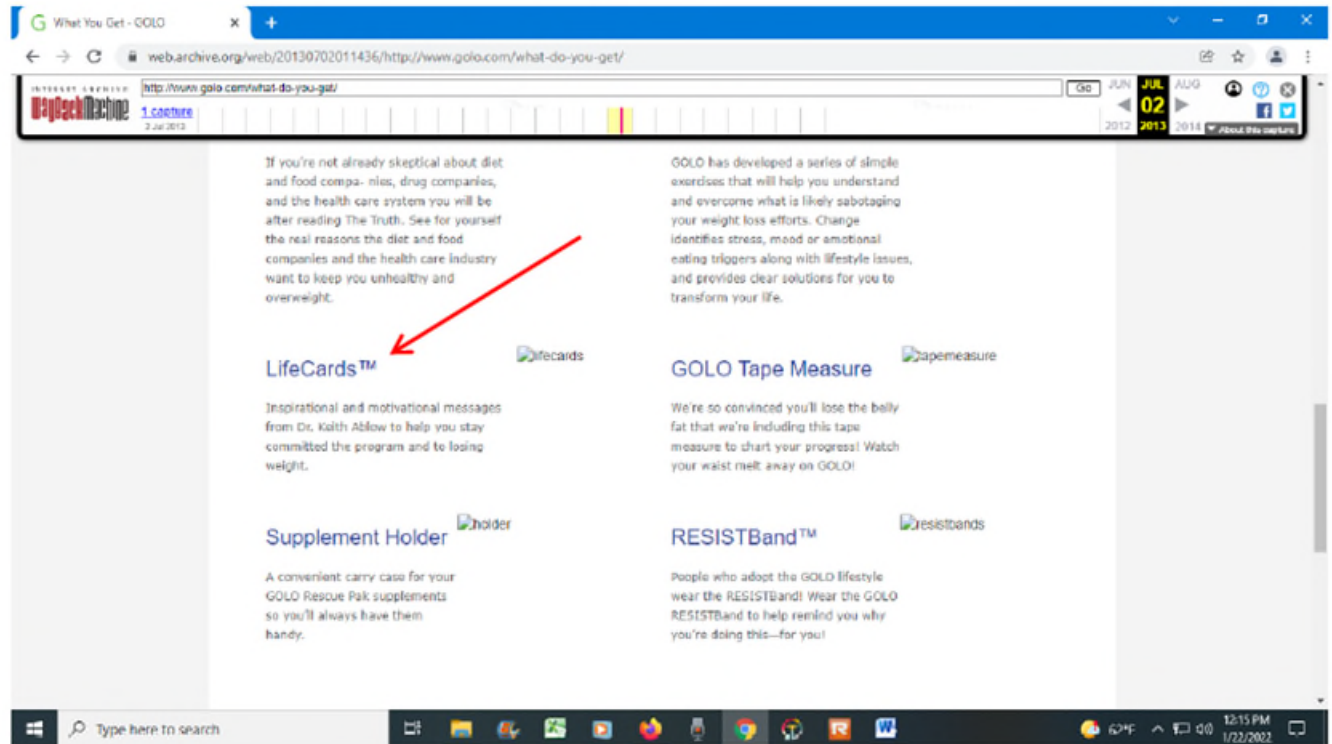
with the identified services. A true and correct copy of the USPTO application file for U.S. App. Serial No. 87088659 is attached hereto as Exhibit 40.

218. According to USPTO records, U.S. App. Serial No. 87088659 was published in the *Official Gazette* on October 26, 2016.

219. According to USPTO records, on or around January 31, 2017, a registration certificate issued for U.S. App. Serial No. 87088659 and was assigned U.S. Reg. No. 5,133,721 (the “’721 Reg.”).

220. On information and belief, GOLO has not continuously and consistently used the GOLO LIFECARDS mark in connection with some or all of the services identified in the ‘721 Reg.

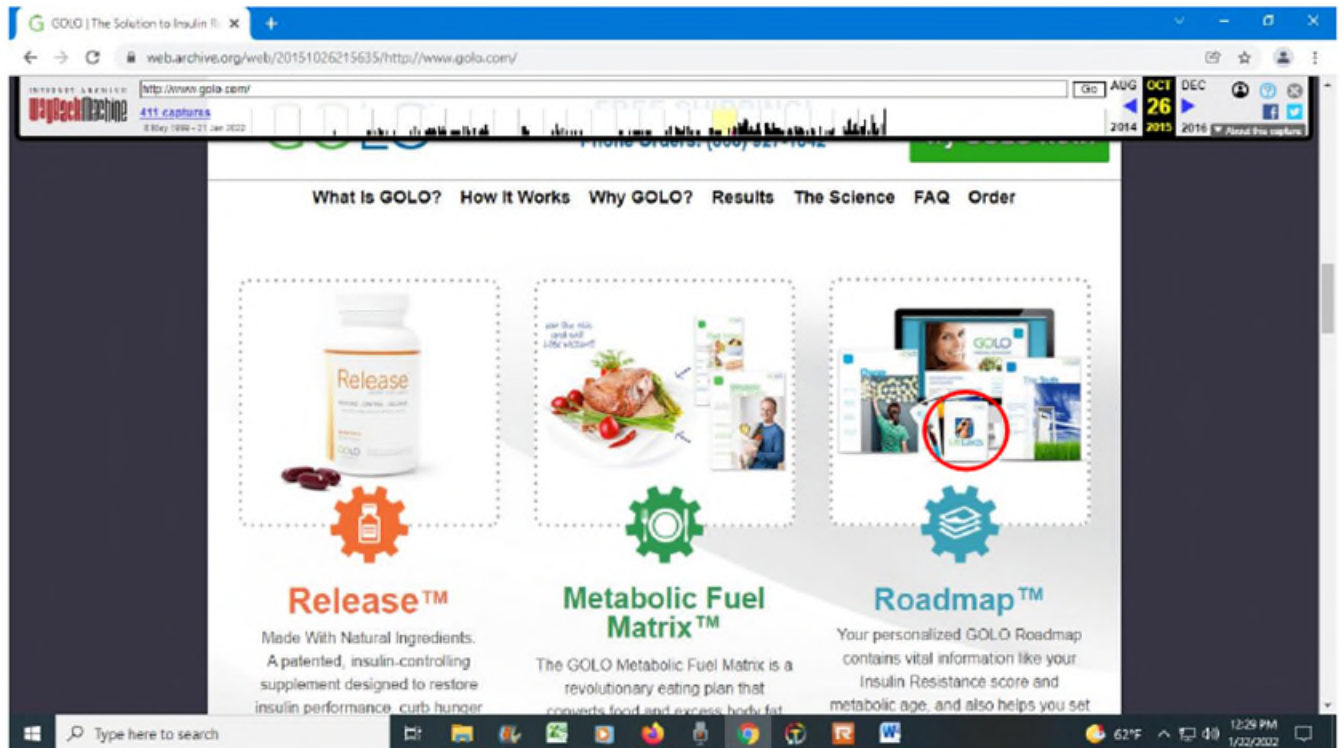
221. A search of GOLO’s current and archived webpages and social media accounts revealed evidence of use of LIFECARDS on the July 2, 2013 and October 26, 2015 versions of GOLO’s website. In the first version, LIFECARDS were described as “inspirational and motivational messages from Dr. Keith Ablow to help you stay committed [to] the program and to losing weight”:

GOLO.COM (July 2, 2013 to October 26, 2015)

GOLO.COM Posting Date: July 2, 2013

Capture Date: 01/22/2012

URL: <https://web.archive.org/web/20130702011436/http://www.golo.com/what-do-you-get/>



GOLO.COM Posting Date: October 26, 2015

Capture Date: 01/22/2022

URL: <https://web.archive.org/web/20151026215635/http://www.golo.com/>



GOLO.COM Posting Date: October 26, 2015

Capture Date: 01/22/2022

URL: <https://web.archive.org/web/20151026215635/http://www.golo.com/>

222. A thorough search of subsequent versions of GOLO’s website, their social media accounts, and the worldwide web yielded no additional evidence of the word mark “GOLO LIFECARDS” being used in connection with International Class 44 services.

223. On information and belief, GOLO ceased using the GOLO LIFECARDS mark in connection with some or all of the services identified in the ‘721 Reg. more than three years ago.

224. According to USPTO records, on or around June 29, 2016, GOLO filed or caused to be filed U.S. App. Serial No. 87088674 for the GOLO RESCUE PLAN word mark identifying “Health care services for individuals, namely, weight loss program services, weight loss diet

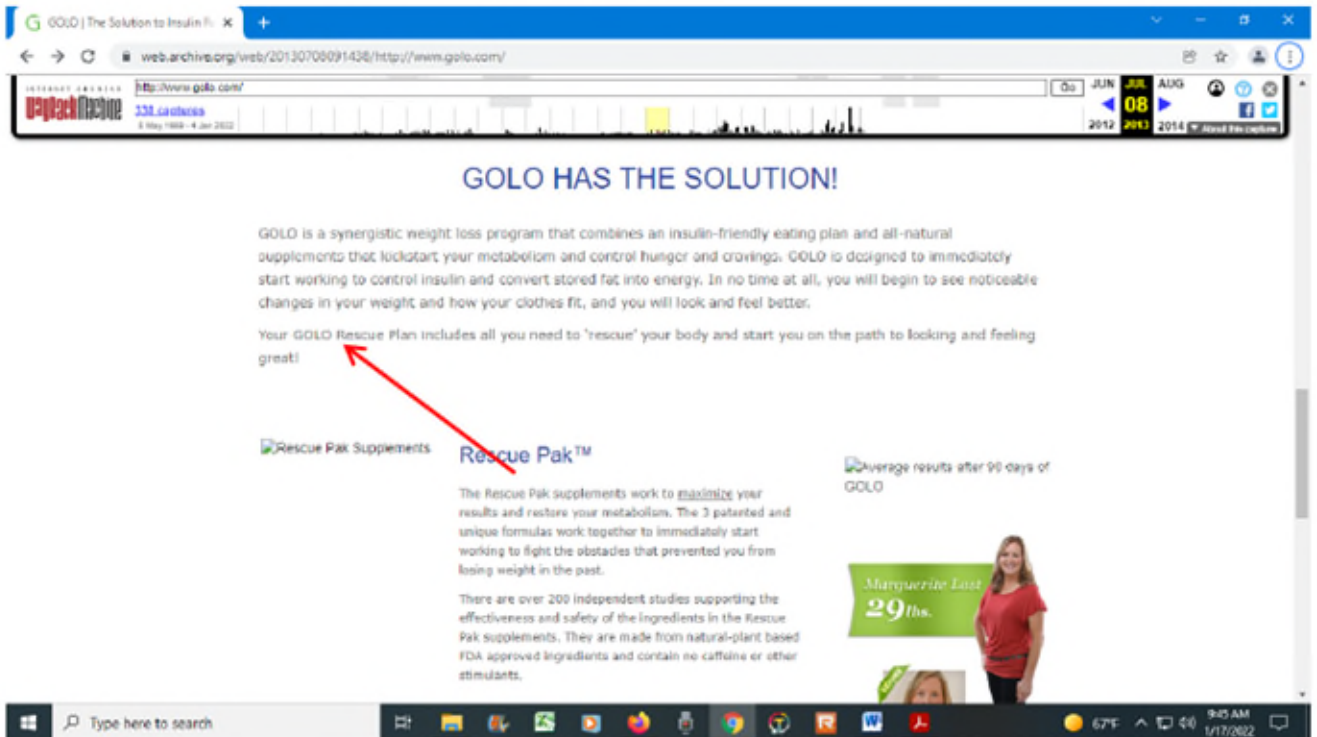
planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition” in International Class 44 under Section 1(a), and identifying a first use date of June 27, 2016. In support of U.S. App. Serial No. 87088674, GOLO submitted a specimen purporting to show use of the mark in connection with the identified services. A true and correct copy of the USPTO application file for U.S. App. Serial No. 87088674 is attached hereto as Exhibit 41.

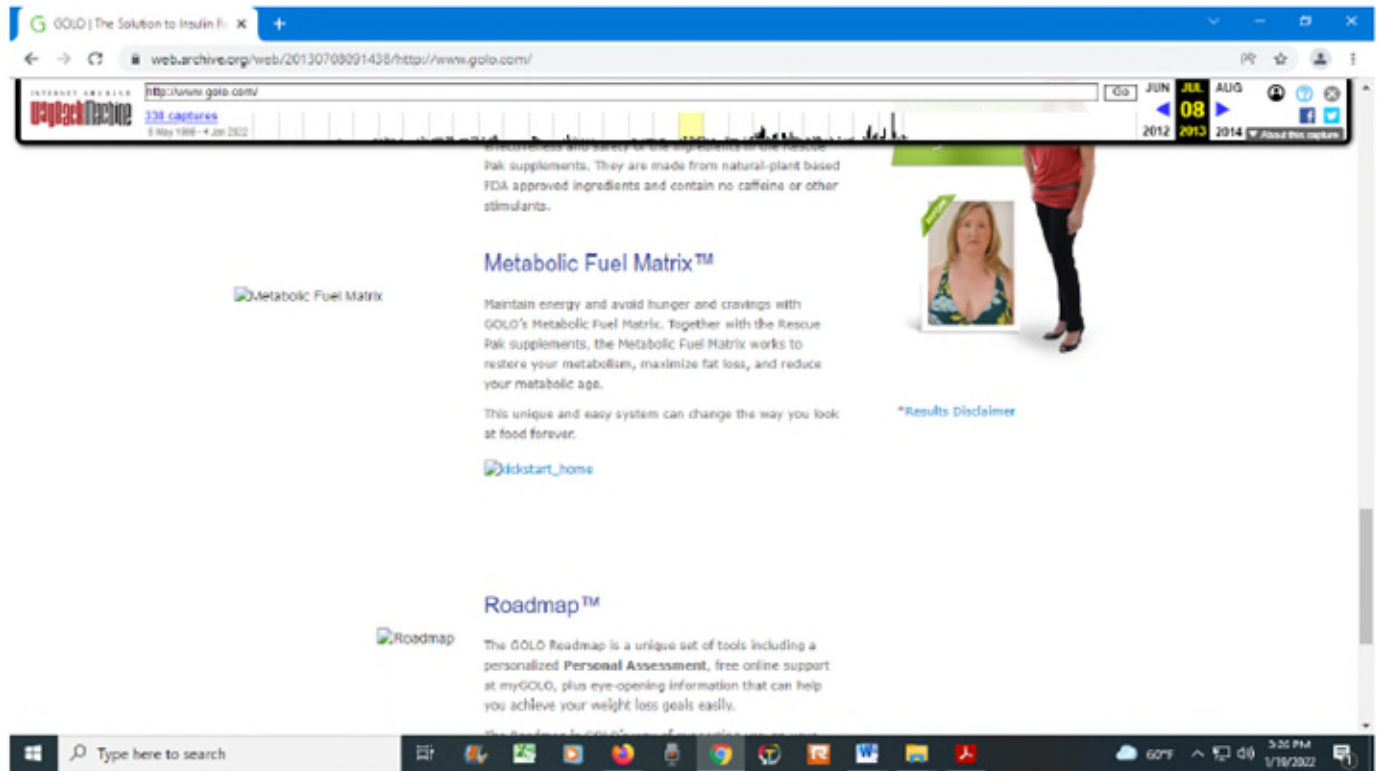
225. According to USPTO records, U.S. App. Serial No. 87088674 was published in the *Official Gazette* on February 22, 2017.

226. According to USPTO records, on or around May 30, 2017, a registration certificate issued for U.S. App. Serial No. 87088674 and was assigned U.S. Reg. No. 5,212,233 (the “233 Reg.”).

227. On information and belief, GOLO has not continuously and consistently used the GOLO RESCUE PLAN mark in connection with some or all of the services identified in the ‘233 Reg.

228. A search of GOLO’s current and archived webpages and social media accounts revealed evidence of use of GOLO RESCUE PLAN on different versions of GOLO’s website from July 8, 2013 to June 24, 2018. The first version identified the GOLO Rescue Plan as a three-part weight loss program that included the Rescue Pak™, Metabolic Fuel Matrix™, and the Roadmap™:

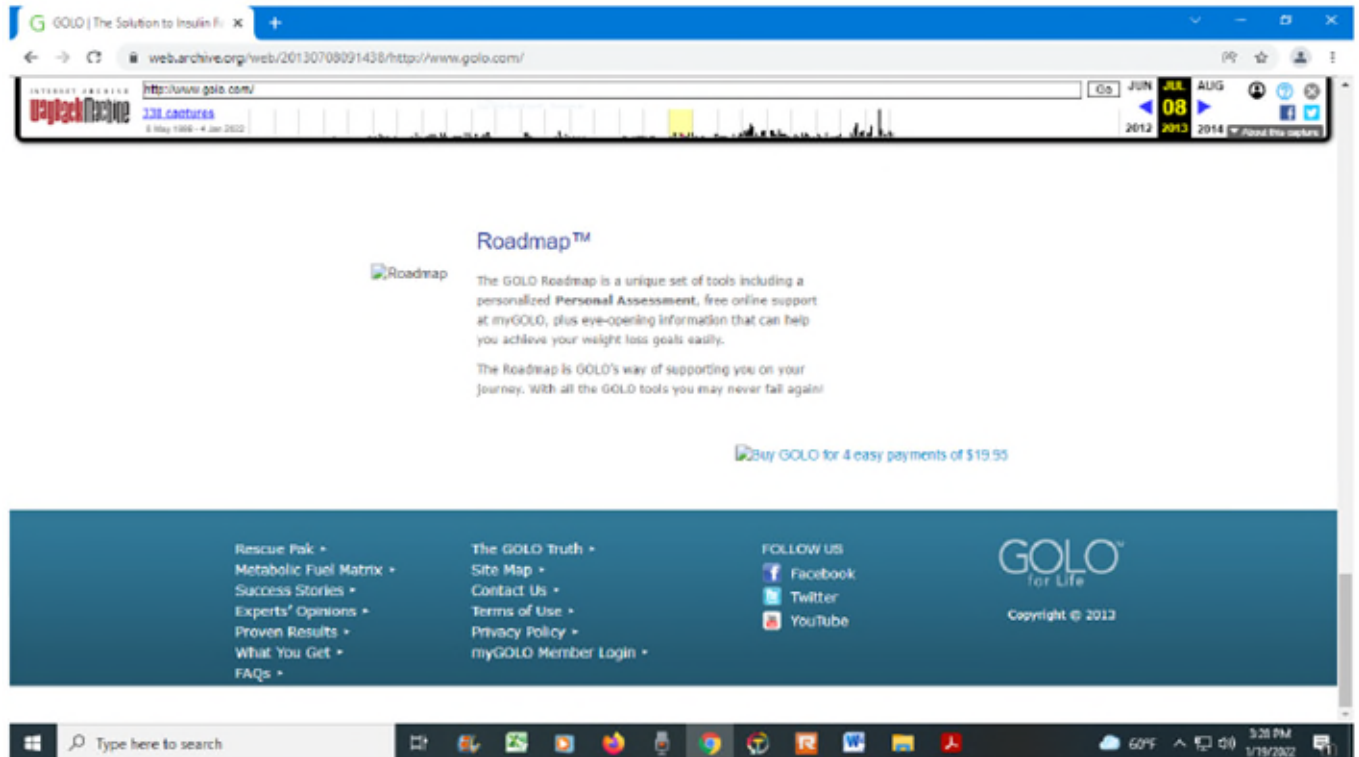
GOLO.COM (July 8, 2013 to June 24, 2018)**GOLO.com Publish Date: July 8, 2013****Date Captured: 01/17/2022****URL: <https://web.archive.org/web/20130708091438/http://www.golo.com/>**

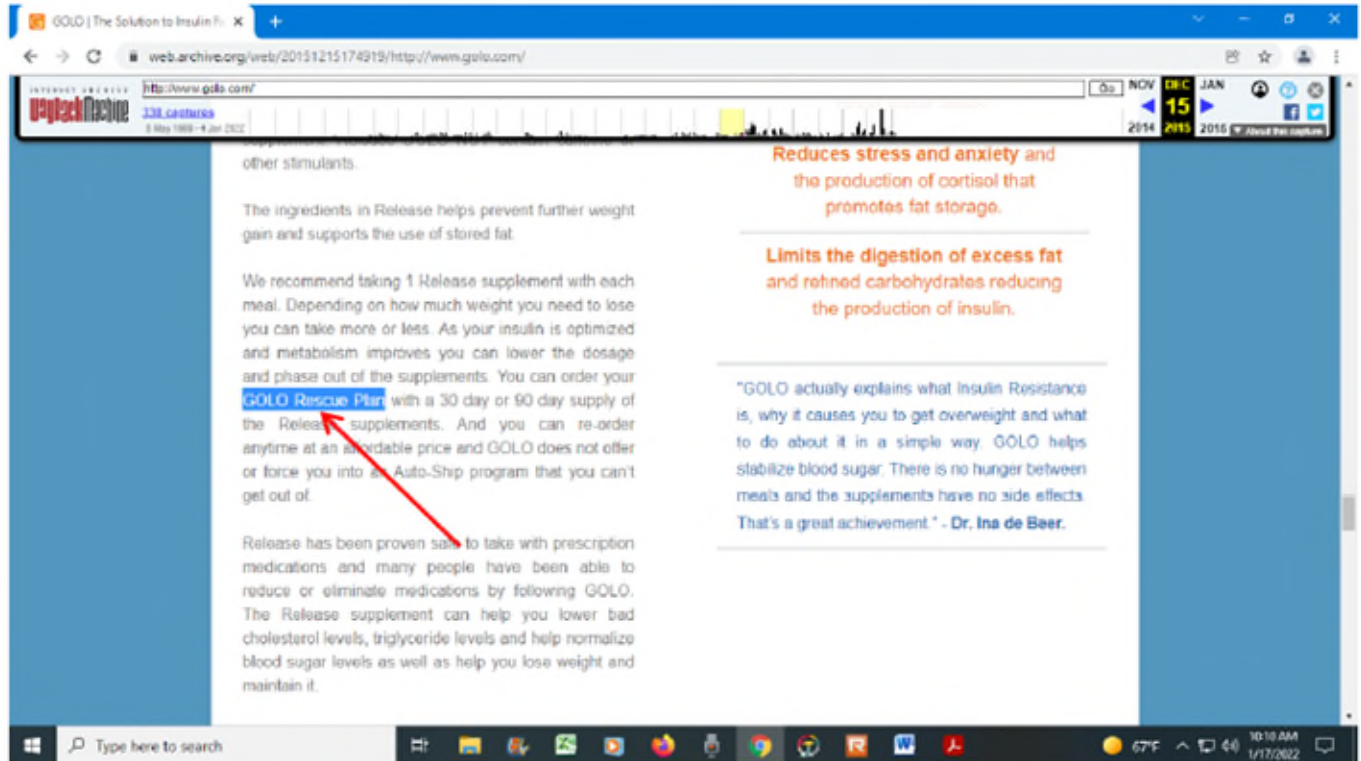


GOLO.com Publish Date: July 8, 2013

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20130708091438/http://www.golo.com/>

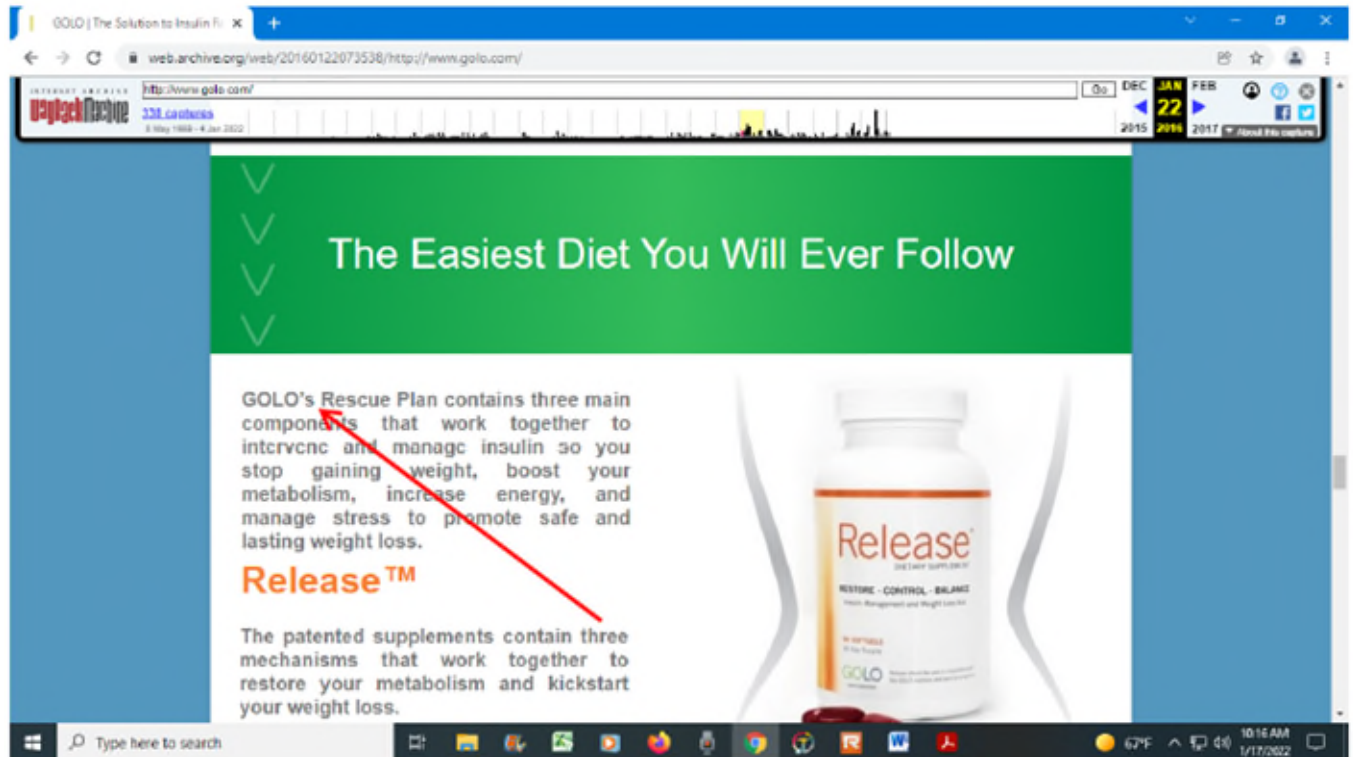




GOLO.com Publish Date: December 15, 2015

Date Captured: 01/17/2022

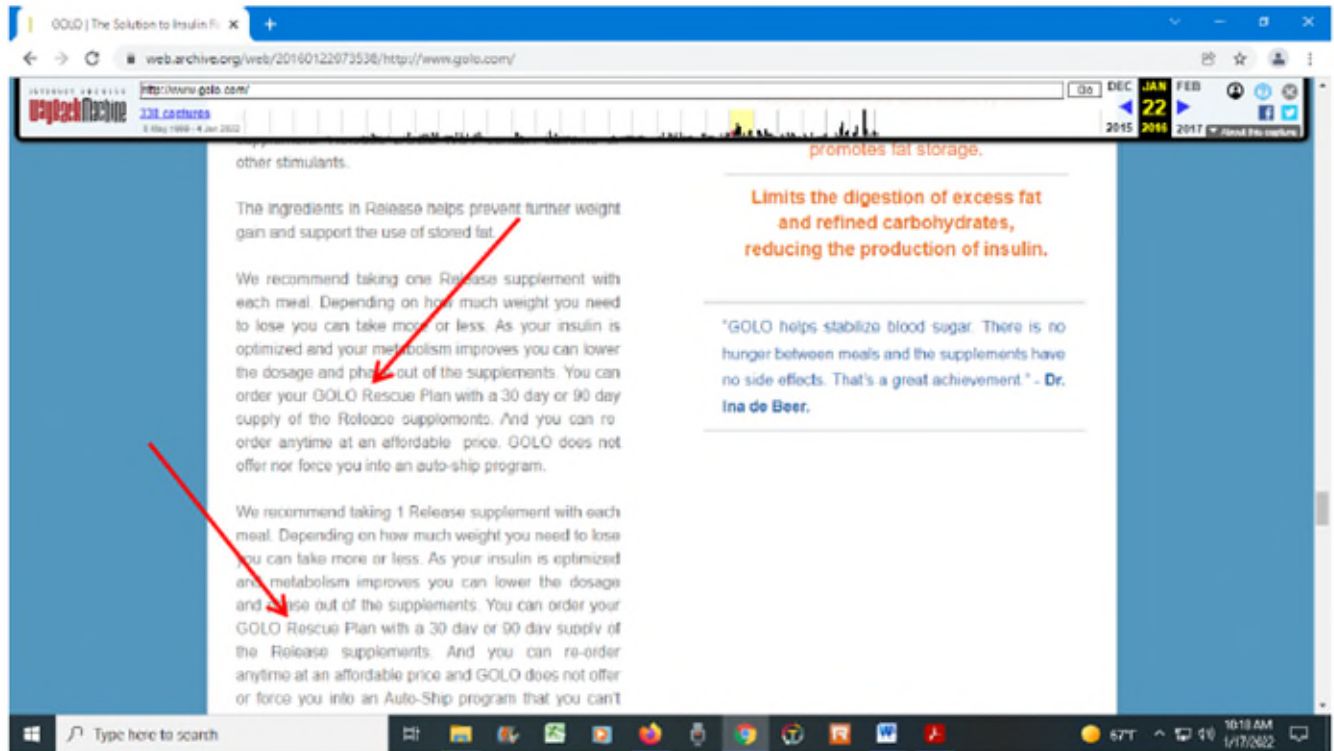
URL: <https://web.archive.org/web/20151215174919/http://www.golo.com/>



GOLO.com Publish Date: January 22, 2016

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20160122073538/http://www.golo.com/>

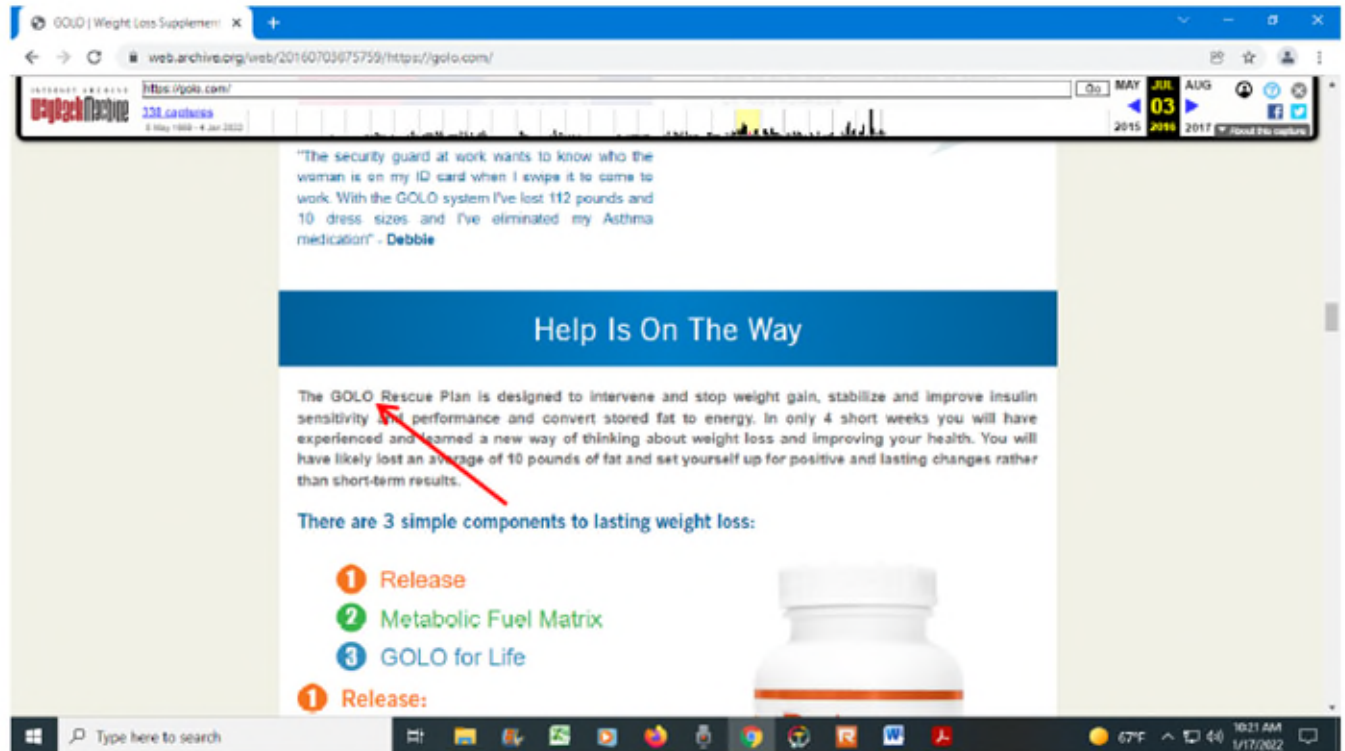


GOLO.com Publish Date: January 22, 2016

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20160122073538/http://www.golo.com/>

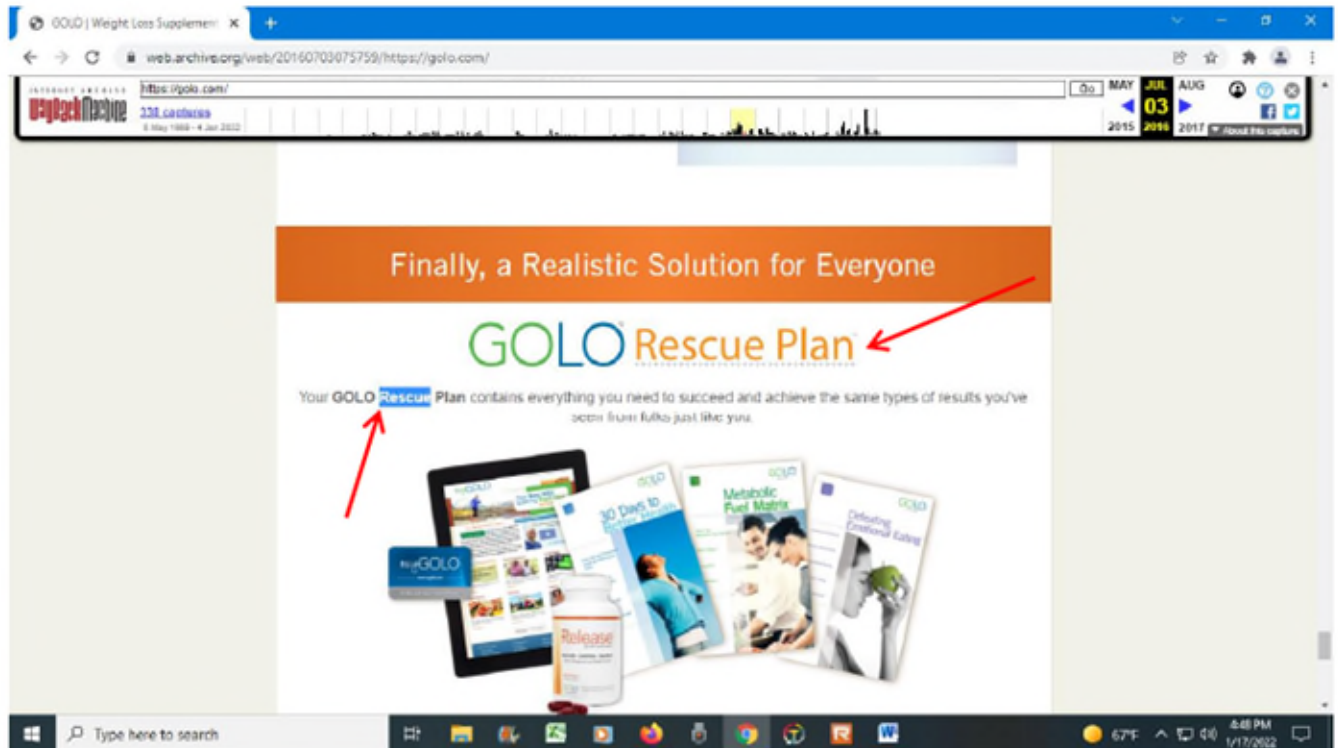
229. The July 3, 2016 version of GOLO's website identified the GOLO Rescue Plan as a five-part weight loss program that included a myGOLO membership, 30-day supply of Release pills, the Metabolic Fuel Matrix, and booklets titled 30 Days to Better Health and Defeating Emotional Eating:



GOLO.com Publish Date: July 3, 2016

Date Captured: 01/17/2022

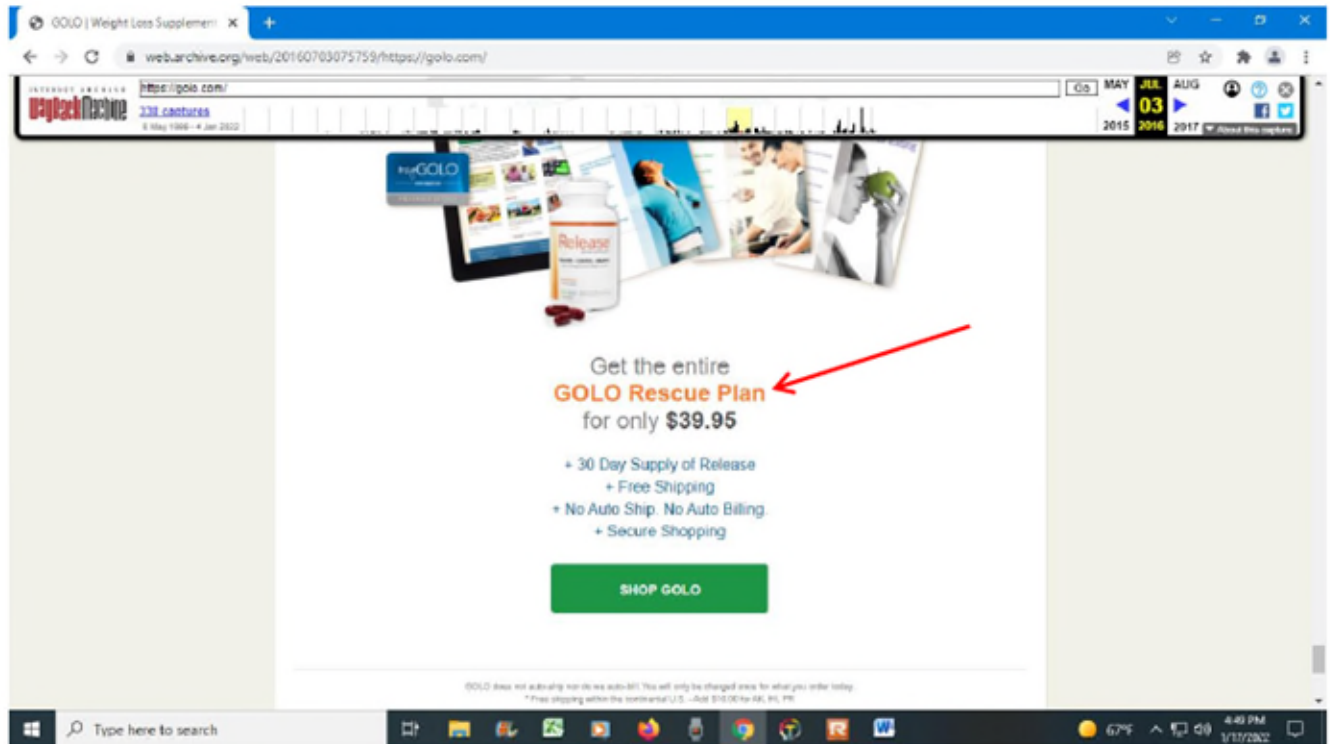
URL: <https://web.archive.org/web/20160703075759/https://golo.com/>



GOLO.com Publish Date: July 3, 2016

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20160703075759/https://golo.com/>



GOLO.com Publish Date: July 3, 2016

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20160703075759/https://golo.com/>



GOLO.com Publish Date: July 3, 2016

Date Captured: 01/17/2022

URL: <https://web.archive.org/web/20160703075759/https://golo.com/>

230. The mark was also displayed on GOLO's Facebook account from February 29, 2016 to September 22, 2018; GOLO's Twitter account from February 9, 2016 to November 22, 2018; on GOLO's Instagram account on November 22, 2018; and GOLO's Pinterest account on July 27, 2017.

231. A thorough search of subsequent versions of GOLO's website, their social media accounts, and the worldwide web yielded no additional evidence of the word mark GOLO RESCUE PLAN being used in connection with International Class 44 services.

232. On information and belief, GOLO ceased using the GOLO RESCUE PLAN mark in connection with some or all of the services identified in the '233 Reg. more than three years ago.

FIRST COUNTERCLAIM
(False Advertising in Violation of 15 U.S.C. § 1125(a))

233. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

234. GOLO's false and misleading advertisements and statements constitute false advertising in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

235. GOLO have made and continue to make false and misleading representations concerning GOLO's products in advertisements, marketing materials, and/or oral statements, throughout the United States, and upon information and belief in Delaware, with the intent to mislead and deceive consumers.

236. On information and belief, GOLO's false and/or misleading statements have actually deceived or tended to deceive a substantial segment of the relevant consumers for weight loss products and/or nutritional supplements.

237. On information and belief, GOLO's false and/or misleading statements have influenced the purchasing decisions of consumers for weight loss products and/or nutritional supplements.

238. GOLO's false and misleading statements were and are made in interstate commerce.

239. GOLO's improper and unlawful activities, as described herein, have been willful and deliberate, thereby making this an exceptional case under the Lanham Act. Indeed, GOLO knew or reasonably should have known that its advertisements and marketing materials were false and/or misleading. Therefore, GOLO's false advertising of its products was purposeful and knowing and merits a finding that exceptional circumstances exist sufficient to support an award of attorneys' fees and treble damages.

240. As a direct and proximate result of the acts of GOLO as alleged herein, Goli Nutrition has been damaged and is likely to be damaged in the future.

241. As a direct and proximate result of the acts of GOLO as alleged herein, Goli Nutrition has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits, while GOLO is profiting at Goli Nutrition's expense.

242. Goli Nutrition has suffered an irreparable injury.

243. Goli Nutrition has no adequate remedy at law.

244. The balance of hardships favor granting Goli Nutrition injunctive relief.

245. The public interest would be served by enjoining GOLO because it would, among other reasons, stop false and misleading advertising from continuing.

SECOND COUNTERCLAIM
(Deceptive Trade Practices in Violation of DEL. CODE ANN. TTT. 6 § 2531)

246. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

247. GOLO's advertising and promotional materials, as described herein, contain literally false statements regarding the nature, characteristics, benefits, uses or qualities of goods in commerce.

248. These literally false advertising and promotional statements are material to consumer purchasing decisions and have caused and are causing damages to Goli Nutrition.

249. GOLO's false statements and advertising violate the Delaware Deceptive Trade Practices Act and the common law of Delaware.

250. Unless this Court enjoins GOLO from continuing to make these false claims and orders their retraction and/or correction, the false advertising will continue to cause Goli Nutrition

to suffer a loss of consumer confidence, sales, profits, and goodwill, which will irreparably harm Goli Nutrition.

251. GOLO's false statements are willful, with malicious and deceptive intent, making this an exceptional case.

252. Goli Nutrition has no adequate remedy at law.

THIRD COUNTERCLAIM
(Common Law Unfair Competition)

253. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

254. GOLO's unlawful acts, as described above, constitute unfair competition under Delaware law.

255. By making false and misleading statements about its products, GOLO has utilized unfair methods of competition and deceptive trade practices.

256. Goli Nutrition reasonably expects to build goodwill and business relationships based on its reputation and the quality of its products.

257. GOLO's unlawful actions have caused, and will continue to cause, Goli Nutrition irreparable harm to its reputation and its ability to build goodwill and business relationships unless enjoined.

258. GOLO has also profited from their unlawful actions and have been unjustly enriched to the detriment of Goli Nutrition. GOLO's unlawful actions have caused Goli Nutrition monetary damage in an amount presently unknown, but to be determined at trial.

FOURTH COUNTERCLAIM
(Declaratory Judgement of Invalidity of the '578 Reg. on the Basis of *Void Ab Initio*)

259. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

260. GOLO has asserted ownership of the GOLO mark in connection with the goods identified in the ‘578 Reg. in this action.

261. On information and belief, GOLO has not used the GOLO mark in connection with footwear, pants, shorts, hoodies, jumpsuits, or hats. GOLO did not submit any specimens depicting use of the GOLO mark in connection with footwear, pants, shorts, hoodies, jumpsuits, or hats. Instead, GOLO submitted specimens showing use in connection with t-shirts only.

262. A signatory to a declaration under 15 U.S.C. § 1051(d) attests that the applicant or the applicant’s related company or licensee is using the mark in commerce on or in connection with all the goods/services in the application or notice of allowance in order to secure registration in connection with all the goods/services listed in the application.

263. GOLO’s ‘578 Reg. has been defective from the start because it was based on an inaccurate declaration of use, and therefore, was not and is not entitled to registration on void ab initio grounds.

264. Had the USPTO been aware that the GOLO mark was not in bona fide use in connection with footwear, pants, shorts, hoodies, jumpsuits, or hats, the USPTO would not have permitted registration of the ‘578 Reg. The ‘578 Reg. is therefore invalid on the basis of void ab initio.

265. Counterclaim Plaintiffs are being damaged by the ‘578 Reg., which is asserted against Counterclaim Plaintiffs in this action.

266. Counterclaim Plaintiffs are entitled to a declaration that the ‘578 Reg. is invalid as void ab initio and request that this Court order cancellation of the ‘578 Reg. under authority of 15 U.S.C. § 1119.

FIFTH COUNTERCLAIM
(Declaratory Judgement of Invalidity of the ‘942 Reg. on the Basis of *Void Ab Initio*)

267. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

268. GOLO has asserted ownership of the GOLO METABOLIC MATRIX mark in connection with the services identified in the '942 Reg. in this action.

269. On information and belief, GOLO has not used the GOLO METABOLIC MATRIX mark in connection with "Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition."

270. GOLO did not submit a specimen depicting use of the GOLO METABOLIC MATRIX mark in connection with any of the foregoing services. The specimen submitted by GOLO does not show use of GOLO METABOLIC MATRIX as a source identifier with respect to any of the identified services.

271. A signatory to a declaration under 15 U.S.C. § 1051(d) attests that the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with all the goods/services in the application or notice of allowance in order to secure registration in connection with all the goods/services listed in the application.

272. GOLO's '942 Reg. has been defective from the start because it was based on an inaccurate declaration of use, and therefore, was not and is not entitled to registration on *void ab initio* grounds.

273. Had the USPTO been aware that the GOLO mark was not in *bona fide* use in connection with "Health care services for individuals, namely, weight loss program services, weight loss diet planning and supervision, weight management programs, and consulting services

in the fields of diet, weight loss, diet planning, lifestyle wellness, health and nutrition,” the USPTO would not have permitted registration of the ‘942 Reg.

274. Goli Nutrition is being damaged by the ‘942 Reg., which is asserted against Goli Nutrition in this action.

275. Goli Nutrition is entitled to a declaration that the ‘5942 Reg. is invalid as *void ab initio* and request that this Court order cancellation of the ‘942 Reg. under authority of 15 U.S.C. § 1119.

SIXTH COUNTERCLAIM

(Declaratory Judgement of Invalidity of the ‘221 Reg., the ‘721 Reg., and the ‘233 Reg. on the Basis of Abandonment)

276. Goli Nutrition realleges and incorporates the previous paragraphs of these counterclaims as though fully set forth herein.

277. GOLO has asserted ownership of (1) the GOLO FUEL INDEX mark in connection with the services identified in the ‘221 Reg., (2) the GOLO LIFECARDS mark in connection with the services identified in the ‘721 Reg., and (3) the GOLO RESCUE PLAN mark in connection with the services identified in the ‘233 Reg. in this action.

278. On information and belief, GOLO has not continuously and consistently used the GOLO FUEL INDEX mark in connection with some or all of the services identified in the ‘221 Reg.

279. On information and belief, GOLO ceased making any *bona fide* use of the GOLO FUEL INDEX mark with an intent not to resume use in commerce in the U.S. in connection with some or all of the services identified in the ‘221 Reg. more than three years ago.

280. On information and belief, GOLO has not continuously and consistently used the GOLO LIFECARDS mark in connection with some or all of the services identified in the ‘721 Reg.

281. On information and belief, GOLO ceased making any *bona fide* use of the GOLO LIFECARDS mark with an intent not to resume use in commerce in the U.S. in connection with some or all of the services identified in the ‘721 Reg. more than three years ago.

282. On information and belief, GOLO has not continuously and consistently used the GOLO RESCUE PLAN mark in connection with some or all of the services identified in the ‘233 Reg.

283. On information and belief, GOLO ceased making any *bona fide* use of the GOLO RESCUE PLAN mark with an intent not to resume use in commerce in the U.S. in connection with some or all of the services identified in the ‘233 Reg. more than three years ago.

284. Accordingly, the GOLO FUEL INDEX mark, the GOLO LIFECARDS mark, and the GOLO RESCUE PLAN mark have been abandoned through non-use of more than three years with an intent not to resume use.

285. Goli Nutrition is being damaged by the ‘221 Reg., the ‘721 Reg., and the ‘233 Reg., which are asserted against Goli Nutrition in this action.

286. Goli Nutrition is entitled to a declaration that the alleged GOLO FUEL INDEX mark, the GOLO LIFECARDS mark, and the GOLO RESCUE PLAN mark have been abandoned and are invalid.

287. Goli Nutrition requests that this Court order cancellation of the ‘221 Reg., the ‘721 Reg., and the ‘233 Reg. under authority of 15 U.S.C. § 1119.

PRAYER FOR RELIEF

Wherefore, Goli Nutrition prays for judgment as follows:

1. Goli Nutrition denies each and every allegation contained in GOLO’s prayer for relief, and specifically denies that GOLO has been injured in any way whatsoever, and specifically

denies that GOLO is entitled to relief of any kind whatsoever. Goli Nutrition requests this Court enter judgment in favor of Goli Nutrition and against GOLO.

2. Goli Nutrition requests that this Court dismiss the claims in GOLO's Complaint with prejudice in their entirety and grant such other and further relief as this Court deems is just and equitable.

3. Goli Nutrition requests that this Court enjoin and restrain GOLO, its officers, directors, advisory board members, clinical advisory board members, scientific advisory board members, agents, servants, employees, attorneys, and all others in active concert or participation with GOLO, during the pendency of this action and thereafter permanently from:

- A. Engaging in any false or misleading advertising in any manner whatsoever;
- B. Engaging in any deceptive trade practice in any manner whatsoever;
- C. Unfairly competing with Goli Nutrition in any manner whatsoever; and
- D. Disparaging Goli Nutrition's products in any manner whatsoever.

4. Goli Nutrition requests that this Court require Counter-Defendants to deliver up, or cause to be delivered up, for destruction all advertisements, marketing material, and all other materials in the possession or control of Counter-Defendants that contain false or misleading statements of fact about GOLO's products.

5. Goli Nutrition requests that this Court require GOLO to publish appropriate corrective advertising.

6. Goli Nutrition requests that this Court require GOLO to account for and pay over to Goli Nutrition the amount of Goli Nutrition's damages pursuant to 15 U.S.C. § 1117 and Delaware law.

7. Goli Nutrition requests that this Court require GOLO to account for and pay over to Goli Nutrition the amount of GOLO's profits pursuant to 15 U.S.C. § 1117 and Delaware law.

8. Goli Nutrition requests that this Court award it treble damages in addition to any damages amounts that are determined at trial.

9. Goli Nutrition requests that this Court enter a judgement declaring that GOLO's '578 Reg. and '942 Reg. are *void ab initio* and that marks represented by GOLO's '221 Reg., '721 Reg., and '233 Reg. have been abandoned.

10. Goli Nutrition requests that this Court enter an order instructing the USPTO to cancel the '578 Reg., the '942 Reg., the '221 Reg., the '721 Reg., and the '233 Reg.

11. Goli Nutrition requests that this Court award it its costs of suit and reasonable attorneys' fees incurred in this action.

12. Goli Nutrition requests that this Court enter such other relief as this Court deems just and proper.

JURY DEMAND

Goli Nutrition hereby requests a trial by jury on all of its counterclaims.

Dated: January 31, 2022

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Respectfully submitted,

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